



W.P.No.25148 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25148 of 2023

and

W.M.P.No.24569 of 2023

Gopal Selvam

... Petitioner

Vs.

The Assistant Commissioner (ST),
Selaiyur Assessment Circle,
Nandanam, Chennai,
Tamil Nadu - 600 035.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records on the file of the respondent and quash the impugned order under Rule No.9(4) of the GST Act, 2017 dated 17-05-2023 vide Reference Number : ZA330523075212Y passed by the respondent as illegal and not in accordance with law.

For Petitioner : Mr.B.Sakthivel

For Respondent : Mrs.K.Vasanthamala
Government Advocate



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ORDER

Mrs.K.Vasanthamala, learned Government Advocate takes notice on behalf of the respondent.

2. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

3. The petitioner has challenged the impugned order bearing Ref.No.ZA330523075212Y dated 17.05.2023 issued under Form GST REG-05 under Rule 9(4) of the Tamil Nadu Goods and Service Tax (TNGST) Rules, 2017 rejecting the application filed by the petitioner for fresh registration under the respective GST enactments to carry on business.

4. The petitioner appears to be a person with certain disability, who had failed to file returns in time and therefore, the petitioner's registration was cancelled on 25.01.2022.



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5. The petitioner had an option to file an appeal against the aforesaid order cancelling the registration before the Appellate Commissioner under Section 107 of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017 or to file an application for revocation of the cancellation of registration under Section 30 of the respective GST enactments. Either way, these appeals or the applications were to be filed within the time line stipulated in the respective provisions. The petitioner failed to exercise the same.

6. The records indicate that the petitioner had filed the returns for the entire period on 24.04.2023 in GSTR-10. It appears that the petitioner has also filed a fresh application for registration on the same day, which has now been rejected by an order dated 17.05.2023.

7. The records further indicates that a Show Cause Notice under Section 63 read with Section 50(3) and Section 122(1)(x) and Rule 100(2) of the GST Rules under Form GST-ASMT-14 has been issued to the petitioner on 25.07.2023.



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8. In the said notice, the respondent has sought to levy tax on the closing stock, which appears to have not been declared as the closing stock appears to have been cleared without payment of tax.

9. It is noticed that the petitioner was also called for personal hearing on 11.08.2023 at 11.30 a.m. The petitioner has also not participated in the proceedings.

10. Although the learned counsel for the petitioner would submit that the petitioner appeared for personal hearing, the contention of the Department is that all through the period beginning from 2017, the petitioner has debited the tax liability only from the Input Tax Credit availed on the supplies made to the petitioner and that only a sum of Rs.59,448/- has been paid in cash during the period in dispute.

11. Be that as it may, the denial of fresh registration to the petitioner cannot be justified particularly considering the fact that the petitioner will get into business one way or the other for his livelihood.



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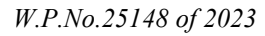
WEB COPY 12. By declining registration, the Department is going to be the loser.

There will be a leakage of revenue as the petitioner will still continue to do business without registration. Therefore, the registration should be denied to the petitioner.

13. This aspect was also considered by this Court in **M/s.Suguna Cutpiece Center Vs. Appellate Deputy Commissioner (ST) (GST) and another**, 2022 (2) TMI 933.

14. Under these circumstances, Court is inclined to dispose this writ petition by directing the respondent to permit the petitioner to carry on the business either by allowing the petitioner to avail the benefit of Notification No.3/2023-Central Tax dated 31.03.2023 as extended by Notification No.23/2023-Central Tax dated 17.07.2023 or in the alternative, accept the application filed for fresh registration.

15. This will be without prejudice to the rights of the respondent to complete the proceedings initiated under Section 63 read with Section 50(3)



16. Considering the fact that the petitioner has discharged major part of the tax liability by debiting his Electronic Credit Ledger for the supplies effected by the petitioner during the period in dispute, the petitioner shall deposit a sum of Rs.1,50,000/- in cash within a period of thirty days from the date of receipt of a copy of this order without prejudice to the rights of the petitioner in the proceedings that is to be completed pursuant to the notice dated 25.07.2023 in Form GST ASMT-14 issued under Section 63 of the TNGST Act, 2017.

17. Subject to such compliance, the cancelled GSTIN registration of the petitioner under the CGST Act/TNGST Act, 2017 shall be either revoked or a fresh GST registration shall be issued to the petitioner.



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WEB COPY 18. This Writ Petition is disposed of with the above observations. No

costs. Consequently, connected Writ Miscellaneous Petition is closed.

28.08.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

The Assistant Commissioner (ST),
Selaiyur Assessment Circle,
Nandanam, Chennai,
Tamil Nadu - 600 035.



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C.SARAVANAN, J.

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