IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.24731 of 2023
and
W.M.P.No.24167 of 2023

M/s.Sakthi Fashions,
Represented by its Proprietor, Vijaya Durai. ... Petitioner

Vs.

1. The Appellate Authority/The Addl. Commissioner of GST (Appeals-II),
   O/o.The Commissioner of GST & Central Excise (Appeals-II),
   Newry Towers, 2nd Floor, No.2054/I, II Avenue,
   12th Main Road, Anna Nagar, Chennai – 600 040.

2. The Deputy/Assistant Commissioner of GST & Central Excise,
   [Central Jurisdiction], Chennai-South-Division,
   Perungudi Range/Division,
   Range-I Jurisdictional Office, Chennai – 600 096.

3. The Superintendent of GST & Central Excise,
   Chennai East Zone, Zone VIII Circle,
   Thiruvanmiyur, Chennai – 600 041. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records of the third respondent pertaining to the impugned order dated 06.02.2023 in Reference Number:ZA33022030024G and the records of the first respondent pertaining to the impugned order dated 09.08.2023 passed in Order-in-Appeal No.143/2023 (GSTA-II) (JC) and quash the same and consequently direct the respondents to revoke the cancellation of the GST registration of the petitioner's firm.

For Petitioner : P.Suresh Babu

For Respondents : Mr.Sai Srujan Tayi
Senior Standing Counsel

ORDER

This writ petition has been filed challenging the Impugned Order passed by the Appellate Commissioner namely the first respondent on 09.08.2023. By the Impugned Order, the petitioner's appeal against the order dated 06.02.2023 cancelling the registration of the petitioner has been rejected on the ground of limitation.

2. The Relevant portion of the Impugned Order dated 09.08.2023 reads as under:-

> *"5. First, I would like to discuss various legal provisions which govern the time limit to various applications to be made before various forums.*
>
> *"**Appeals to Appellate Authority** – (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the*

*Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed **within three months** from the date on which the said decision or order is communicated to such person."*

5.1 Further, Sub Section (4) of Section 107 of the CGST Act, 2017 provides for extension of time for filing appeals before the appellate authority. The said section is reproduced below for easy reference:

*"The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of **one month**"*

6. As per the above provisions, the maximum time prescribed under the said act to appeal before the appellate authority is four months from the date on which the said decision or order is communicated to such person. In this case, the date of communication of order of cancellation of registration and due date for filing application before the Appellate Authority are mentioned below in Table-2:-

TABLE 2

Sr.No.	GSTIN No.	OIO No. Dated/Communication dated	Due date for filing Appeal before Joint Commissioner (Appeals-II)	Date of filing Appeal before Joint Commissioner (Appeals-II)	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
1	M/s.SAKTHI FASHION, 33GGDPD7172M1Z6	ZA330223030024G dated 06.02.2023	05.06.2023	14.07.2023	Time Barred

As per column (1) to (6) of the above table, it appears that the appellant has not filed application for revocation of cancellation of GST registration before jurisdictional Deputy/Assistant Commissioner.

7. Order in Original was passed on as mentioned in column 5 of Table 1 and as per Section 107 of the Act; the appeal should have been made before as mentioned in column (4) of Table 2.

8. It is clearly evident from Table-2 that the appellant mentioned in Sr.No.1 has not filed appeal within the due date for filing appeal before the Joint Commissioner (Appeals-II). Thus, the appeal is time-barred.

9. In view of the above discussions, the impugned appeal filed by the appellant is dismissed."

3. The facts on record indicate that the petitioner was issued with the Show Cause Notice dated 27.01.2023 to show cause as to why the registration obtained by the petitioner should not be cancelled. The said Show Cause Notice was issued to the petitioner after verification of records and physical inspection of the place of business of the petitioner. The petitioner appears to have failed to respond to the same. Thus, the order dated 06.02.2023 in Form GST REG-19 came to be passed cancelling the registration.

4. Aggrieved by the same, the petitioner has earlier filed application under Section 30 of the GST Act, revocation of the cancellation of the registration in Form GST REG-19 vide order dated 06.02.2023.

5. A Show Cause Notice appears to have been issued on 27.02.2023. However, the petitioner failed to reply to the same. Therefore, the application filed by the petitioner for revocation of the cancellation of registration was also rejected by the Assistant Commissioner, Thiruvanmiyur on 14.03.2023.

6. In view of the above, the petitioner has filed a Statutory Appeal before the first respondent on 14.07.2023 with a delay of 39 days. The petitioner was thus prosecuting the application filed for revocation of cancellation of the registration by filing an application on 16.02.2023 under Section 30 of the GST Act which was rejected on 14.03.2023. The time taken in filing the said application is liable to be excluded.

7. Considering the above, the Court is inclined to dispose this writ petition by directing the respondents to consider the petitioner's appeal and pass appropriate orders on merits and in accordance with law without reference to the limitation on its turn.

8. This writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

12.09.2023

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No

rgm

To

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C.SARAVANAN, J.

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