IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.01.2023**

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.34805 of 2022
and W.M.P.No.34230 of 2022

Space Euro solutions Private Limited
Rep by its Director Gnanaselvam
DP 109 SP 1st Main Road,
3rd Cross Street ,
Ambattur Industrial Estate,
Chennai- 600 058. .. Petitioner

vs

1.The Assistant Commissioner (ST),
Ambattur Industrial Estate Assessment Circle,
Anna Nagar, Chennai.

2.Deputy Commissioner (ST)(FAC)
GST- Appeal, Chennai- II, Chennai- 600 006.
..Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records on the file of the first respondent in Reference Number.ZA3303220425606 dated 10.03.2022 and the order of the second respondent in Memorandum dated 04.11.2022 bearing Rc.No.810 /2022 / A1 and to quash the same as illegal, arbitrary and direct the First Respondent to revoke the cancellation of Petitioner's GSTN GST registration number.33AAYCS8273NIZ9.

For Petitioner : Mr.M.Jaikumar

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader (Tax)

ORDER

Captioned writ petition and captioned writ miscellaneous petition (WMP) will now stand disposed of by this order.

2. An order dated 10.03.2022 made by the first respondent, cancelling the registration of writ petitioner and an order dated 04.11.2022 made by the second respondent in an appeal under Section 107 of the 'Central Goods and Services Tax Act, 2017' ('C-G&ST Act' for the sake of convenience and clarity) bearing Rc.No.810/2022/A1 have been called in question.

3. It is not necessary to be detained by facts as the appellate authority has dismissed the appeal on the ground of limitation, however on facts it will suffice to say that the writ petitioner's registration was cancelled owning to non-filing of monthly returns. Writ petitioner did not seek rectification but filed an appeal and the same culminated in the impugned order.

4. A careful perusal of the impugned orders brings to light that the date of communication of the cancellation order to the writ petitioner is 10.03.2022. Three months therefrom elapsed on 09.06.2022 i.e., the prescribed period qua Section 107 of C-G&ST Act elapsed on 09.06.2022. Condonable period of one month thereafter elapsed on 09.07.2022. The appeal was preferred by the writ petitioner only on 13.10.2022.

5. Law is well settled that when there is a cap, Section 5 of the Limitation Act cannot be applied and going by ***Simplex Infrastructure Ltd. Vs. Union of India*** *reported in 2018 SCC Online SC, 2681 [subsequently, (2019) 2 SCC 455]*, when there is a cap there cannot be any condonation beyond the cap or belated period. **Sagufa Ahmed and Others Vs. Upper Assam Plywood Products Pvt. Ltd., and Others ((2021) 2 SCC 317)** is the another case law which is of relevance.

6. As the appellate authority has dismissed the appeal on the ground of limitation, this Court finds no ground to interfere with the impugned order however it is made clear that this writ Court is not expressing any view or opinion on the merits of the matter and it is also made clear that it is open to the writ petitioner to apply afresh for registration and if the writ petitioner

chooses to apply afresh for registration, the application shall be processed on its own merits and in accordance with law.

7. Captioned writ petition is disposed of as closed albeit with the aforesaid observation. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

02.01.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

1.The Assistant Commissioner (ST),
Ambattur Industrial Estate Assessment Circle,
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GST- Appeal, Chennai- II, Chennai- 600 006.

M.SUNDAR,J.,

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