IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.12.2023
CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.32728 of 2023
&
WMP.No.32340 of 2023

Mohana Blue Metal ... Petitioner

Vs.

The Assistant Commissioner,
Vanagaram Assessment Circle,
No.4/109, 3rd Floor, Integrated
Commercial Tax Building,
Trunk Road, Chennai-Bengaluru
High Ways, Varadharajapuram,
Thiruvallur District ... Respondent

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in Reference No.ZA3301230223169, dated 05.01.2023 and quash the same as arbitrary, illegal.

For Petitioner : Mrs.V. Vijayalakshmi
For Respondents : Mrs. E. Ranganayaki,
AGP (Taxes)

O R D E R

This Writ Petition is filed challenging the order of the respondent dated 05.01.2023, whereby, the petitioner's GST Registration number has been cancelled.

2. The case of the petitioner is that they are engaged in the business of Trading Blue Metal and other allied construction services. The respondent issued a show cause notice dated 26.12.2022 proposing for cancellation of GST Registration for non filing of monthly returns and subsequently, by the impugned order dated 05.01.2023 cancelled the GST Registration of the petitioner on the ground that the petitioner/assessee did not respond to the earlier show cause notice.

3. Mrs.V.Vijayalakshmi, learned counsel appearing for the petitioner would submit that due to ill health of the Managing partner of the petitioner-Firm, namely, Mr.R.Mohan Raj, who was in charge of filing GST returns on behalf of the petitioner-Firm, the petitioner was not able to file GST returns for the months of July 2022 to December 2022. Therefore, she would submit that non filing of GST returns is neither wilful, nor wanton, but on account of bonafide reason as stated above. She would further submit that the impugned cancellation of GST Registration of the petitioner was passed without giving any reasonable opportunity of being heard, hence, the impugned order suffers from gross violation of the principles of natural justice.

3.1. The learned counsel appearing for the petitioners further brought to the notice of this Court number of decisions rendered in similar matters, wherein, the Courts have ordered to restore the cancellation of GST Registration number by allowing those writ petitions and it would be beneficial to refer to the relevant portion of the orders passed by this Court in similar issue.

i) In W.P.No.25048 of 2021 in the case of **(Tvl.Suguna Cutpiece Center vs State of Tamil Nadu)** and the operative portion of the said order is extracted herein below:

> "... These petitioners deserve a chance and therefore should be allowed to revive their registration, so that they can proceed to regularise the defaults. The authorities acting under the Act may impose penalty with the gravity of lapses committed by these petitioners by issuing notice. If required, the Central Government and the State Government may also suitably amend the Rules to levy penalty so that it acts as a deterrent on others from adopting casual approach.
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> 229. In the light of the above discussion, these writ petitions are allowed subject to the following conditions...."

(ii) In yet another decision rendered by the Hon'ble High Court of Allahabad in the case of ***M/s.S.S.Traders Vs. State of UP*** dated 02.11.2021 it is held as follows:-

> "A bare perusal of the show cause notice form under Rule22(1) shows that there is a difference in the show cause

notice dated 12.05.2021 issued to the petitioner and in the form of the show cause notice quoted aforesaid. The specific date and time is necessarily required to be mentioned in the notice for showing cause which is conspicus by its absence in the notice to the petitioner. Moreover, the proviso to subsection (2) of section 29 mandates opportunity of hearing being provided to the person whose registration is proposed to be cancelled before cancelling the registration-the denial of opportunity of hearing to the petitioner as is mandated in the first proviso to sub-section (2) of section 29 of the Act of 2017 vitiates the proceedings as well as the orders of cancelling the registration of the petitioner...."

....The order of cancellation of registration dated 28.05.2021 as well as order passed in the appeal dated 17.07.2021 are quashed. - Petition allowed – Decided in favour of the petitioner."

(iii) In **Sri.Saravanan Rathnavelu Vs. The Superintendent (CGST), Salem-III, Range** passed by this Court in **WP.No.30565 of 2023, dated 19.10.2023**, it is held as follows;

"206. It should be however remembered that the provisions of the Goods and Services Tax Act, 2017 cannot be interpreted in such a manner, so as to debar an assessee, either from obtaining registration or reviving the lapsed/cancelled registration as such an interpretation would be not only contrary to the Article 19(1)(g) of the Constitution of India, but also in violation of Article 14 and Article 21 of the Constitution of India.

207. A reading of Notification No.52/2020 – Central Tax, Central board of Indirect Taxes and Customs, dated 24.06.2020, further indicates that returns could be filed belatedly on payment of late fee and waivers were also granted. Relevant portion of the said Notification reads as under:-

(ii) after the third proviso, the following provisos shall be inserted, namely;-

"Provided also that the total amount of late fee payable for a tax period, under section 47 of the aid Act shall stand waived which is in excess of an amount of two hundred and fifty rupees for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January,2020, by the due date but furnishes the said return between the period from 01st day of July, 2020 to 30th day of September, 2020: Provided also that where the total amount of central tax payable in the said return is nil, the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return ebtween the period from 01st day of July 2020 to 30th day of September 2020.

208. The provisions of the GST Enactments and the Rules made there under read with various clarifications issued by the Central Government pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear, intention is to only facilitate and not to debar and de-recognise assessees from coming back into the GST fold.

209. Thus, the intention of the Government has been to allow the persons like the petitioners to file a fresh application and to process the application for revocationof the cancellation of registration by the officers.

210. In my view, no useful purpose will be served by keeping these petitioners out of the bounds of GST regime under the respective GST enactments other than to allow further leakage of the revenue and to isolate these

petitioners from the ain stream contrary to the objects of the respective GST enactments.

211. The purpose of GST registration is only to ensure just tax gets collected on supplies of goods or service or both and is paid to the exchequer. Keeping these petitioners outside the bounds is a self defeating move as no tax will get paid on the supplies of these petitioners...."

Hence Writ Petition allowed."

3.2 Therefore, the learned counsel for the petitioner submitted that the petitioner would file GST returns and would pay tax along with penalties and interest thereon etc. ,in the event of its GST Registration number being restored and hence, prayed for setting aside the impugned order.

4. The learned Additional Government Pleader appearing for the respondent submitted that the petitioner has committed default in filing GST returns. In such circumstances, if this court considers the request of the petitioner, orders would be passed with regard to the restoration of GST Registration of the petitioner and on such restoration, the petitioner may be

directed to pay all the tax dues along with penalty and interest within a time frame that may be fixed by this court.

5. Considered the submissions of the learned counsel for the petitioner as well as the learned Additional Government Pleader for the respondent and perused the materials available on record.

6. In view of the fact that the petitioner has been continuing his business operations and due to the ill health of the Managing Partner of the petitioner-Firm, who was incharge of filing the GST returns of the petitioner, the petitioner-Firm was not in a position to file GST Returns and in the light of the judgments relied on by the learned counsel for the petitioner, this court, in the interest of justice, is inclined to allow this Writ Petition.

7. Accordingly, the Writ Petition is allowed, the impugned order isset aside. The petitioner is directed to file restoration petition and the

respondent is directed to accept the same and restore the GST Registration number within a week from the date of filing of restoration petition. On restoration of GST Registration, the petitioner is directed to pay the GST dues from July 2022 to December 2022 along with interest, penalty etc., within a period of 45 days from the date of restoration of GST. No costs. Consequently, the connected miscellaneous petition is closed.

14.12.2023

msr
Index:Yes/No
Internet:Yes/No

To

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KRISHNAN RAMASAMY, J.

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