IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.01.2023**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.34774 of 2022
and W.M.P.No.34194 of 2022

Ramanujan Venkatesan .. Petitioner

Vs

1.The Joint Commissioner (Appeals- II)
O/o.Officer of Commissioner of GST
and Central Excise (Appeals- II),
Newry Towers, 2nd Floor, No.2054.1,
II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040.

2.The Deputy Commissioner,
GST and Central Excise,
O/o.Chennai Outer Commissionerate,
Sholinganallur Outer Range,
Pallavaram Division, Chennai.

3.The Superintendent
GST and Central Excise,
O/o.Chennai Outer Commissionerate,
Sholinganallur Outer Range,
Pallavaram Division, Chennai. .. 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 in Order in Appeal No.347 of 2022 (GSTA -II) (JC) on the file of 1st Respondent dated 10.11.2022 herein in confirming the proceeding dated 08.03.2022 made in ZA3303220301385 by 3rd Respondent and quash the same and consequently direct the respondents to restore petitioner's GST registration within the time fixed by this Court.

For Petitioner : Mr.B.Manoharan

For Respondents : Mr.B.Ramanakumar CGSSC

ORDER

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

2. An order dated 10.11.2022 made by the first 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 Ref. No.347/2022 (GSTA-II)(JC) has 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 Goods and Service Tax registration was cancelled owning to non-filing of monthly returns. Writ petitioner did not seek rectification but filed an appeal in Appeal No.347/2022 and the same has culminated in the impugned order.

4. A careful perusal of the impugned order brings to light that the date of communication to the writ petitioner qua the cancellation order is 08.03.2022. Three months therefrom elapsed on 08.06.2022 i.e., the prescribed period qua Section 107 of C-G&ST Act elapsed on 08.06.2022. Condonable period of one month thereafter elapsed on 08.07.2022. The appeal was preferred by the writ petitioner only on 08.09.2022.

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

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M.SUNDAR,J.,

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W.P.No.34774 of 2022

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