IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.690 of 2023

M/s.Hunter Shipping & Trading
Represented by its Proprietor Mr.Chandra Mohan
Having Office at
First Floor, Room No.102,
Door No.33, Rattan Complex
Moore Street, Parrys,
Chennai-600 001. .. Petitioner

Vs.

1. Deputy Commissioner (ST)
GST-Appeal, Chennai-1
C.T.Annexe Building, 3rd Floor,
No.1, Greams Road
Chennai-600 006.

2. Assistant Commissioner (Circle)
Integrated Commercial tax Office
Complex At North Chennai
Wall Tax Road, Chennai-03. .. Respondents

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file in Order No.ZA330322104597U dated 24.03.2022 passed by the 2nd respondent and Rc.No.1287/2022/A1 dated 22.11.2022 passed by the 1st respondent, quash the same and direct the respondents to revoke the cancellation of petitioners GSTIM registration No.33AAKPG6774F1ZN.

For Petitioner	:	Ms.S.Harinyi along with Mr.S.Vishnu
For Respondents	:	Mr.C.Harsha Raj Additional Government Pleader (Taxes)

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ORDER

Captioned writ petition is listed in the Admission Board today.

2. When the matter was taken up, there was an interesting twist to the tale in terms of the trajectory the matter took and therefore, the captioned writ petition will now stand disposed of by this order.

3. Ms.S.Harinyi along with Mr.S.Vishnu, learned counsel on record for writ petitioner and Mr.C.Harsha Raj, learned Additional Government Pleader (Taxes) who accepted notice on behalf of both the respondents are before this writ Court.

4. Short facts shorn of granular particulars will suffice. Factual matrix in a nutshell is that the writ petitioner is a registrant qua 'Tamil Nadu Goods and Services Tax Act, 2017' [hereinafter 'TN-G&ST Act' for the sake of convenience and clarity]; that the writ petitioner's registration was cancelled in and by an 'order dated 24.03.2022 bearing reference No.ZA330322104597U made by the second respondent' [hereinafter 'order of the original authority' for the sake of convenience and clarity]; that the order of the original authority was carried in appeal under Section 107 of TN-G&ST Act which was filed on 29.10.2022 by the writ petitioner; that this appeal is a statutory appeal under Section 107 of TN-G&ST Act; that this appeal culminated in an 'order dated 22.11.2022 bearing reference Rc.No.1287/2022/A1 made by the first respondent' [hereinafter 'order of the Appellate Authority' for the sake of convenience and clarity]; that in and by the order of the first respondent Appellate Authority, the appeal was negatived primarily on the ground of limitation.

5. Writ petitioner's case is that the appeal is not barred by limitation as according to the writ petitioner, the order of the original authority came to the knowledge of the writ petitioner only some time in September 2022 but this is disputed by learned Revenue counsel. It is not necessary to adjudicate upon this disputation / contestation owing to the trajectory the matter has taken.

6. A scanned reproduction of the order of the original authority (second respondent) dated 24.03.2022 alluded to supra is as follows:

FORM GST REG-19

[See Rule 22(3)]

Reference Number: ZA330322104597U

Date: 24/03/2022

To
CHANDRAMOHAN
ROOM No.102 DOOR No.33,FIRST FLOOR,RATTAN COMPLEX,MOORE STREET,PARRYS,Chennai,Tamil Nadu,600001
GSTIN/UIN: 33AAKPG6774F1ZN
Application Reference No. (ARN): AA330322008471W

Dated: 15/03/2022

Order for Cancellation of Registration

This has reference to your reply dated 15/03/2022 in response to the notice to show cause dated 03/03/2022
Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s).

1. The applicants have failure to submit the reply against the Show cause Notice. Hence Department Initiated Cancellation proceeding is not approved. Hence the registration is canceled as per the provision of the ACT.

The effective date of cancellation of your registration is 03/03/2022

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and basis thereof is as follows:
Accordingly, the amount payable by you and the computation and basis thereof is as follows. The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.
You are required to pay the following amounts on or before failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

Head	Central Tax	State Tax/UT Tax	Integrated Tax	Cess
Tax	0	0	0	0
Interest	0	0	0	0
Penalty	0	0	0	0
Others	0	0	0	0
Total	0.0	0.0	0.0	0.0

Place: HARBOUR (C)
Date: 24/03/2022

Signature Not Verified
Digitally signed by DS GOODS AND SERVICES TAX NETWORK(4)
Date: 2022.03.24 17:45:49 IST

R Parthiban
Assistant Commissioner(Circle)
HARBOUR

7. A scanned reproduction of the order of the Appellate Authority (first respondent) dated 22.11.2022 alluded to supra is as follows:

Rc.No.1287/2022 /A1

C/O. THE DEPUTY COMMISSIONER (ST)
GST-APPEAL, CHENNAI-I,
C.T. ANNEXE BUILDING, 3RD FLOOR
NO. 1, GREAMS ROAD, CHENNAI-600 006
Dated: 22.11.2022

MEMORANDUM

Sub: Appeal petition - Appeal filed by the Tvl. Hunter Shipping & Trading - against the order for the cancellation of Registration by the Assistant Commissioner(ST), Harbour Assessment circle, Chennai, order No.ZA330322104597U dated 24.03.2022 - Certain defects noticed - regarding

Ref: Application of the dealer Tvl. Hunter Shipping & Trading dated 09.11.2022

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ORDER

Tvl. Hunter Shipping & Trading are registered taxpayers in the circle of Assistant Commissioner (ST), Harbour Assessment Circle. In this case the order for the cancellation of Registration was issued by the Assistant Commissioner(ST), Harbour Assessment circle, Chennai, order No. ZA330322104597U dated 24.03.2022.

Aggrieved against the entirety of the order for the cancellation of registration the taxable person filed appeal before this forum through online on 29.10.2022 whereby hard copy was submitted to this office on 09.11.2022 and as per rule 108 where the said copy was submitted after seven days the date of submission of hard copy was taken into account for the calculation of time limit, based on which memorandum was issued citing time limitation prescribed under section 107(1) of the CGST/ SGST Act, 2017 read with rule 108 of the CGST/ SGST RULES, 2017.

i) The Appeal petition is filed after the limitation period

ii) As per Section 107(4) of the TNGST Act 2017 which reads as follows: 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

iii) The appellant has been prevented for sufficient cause from not presenting the appeal within the aforesaid period of three months as per Section 107(1) of the TNGST Act 2017 and further period of one month, only if the appellants has been prevented by sufficient cause from presenting the appeal within period of three months. Therefore on any account an appeal presented after a period of four months from the date of receipt of the decision or order being communicated to a such person shall not be entertained by the Appellate Authority functioning under the TNGST Act 2017.

iv) **Rule 108. Appeal to Appellate Authority**

a) An appeal to the appellate authority under sub -section(1) of section 107 shall be filed in FORM GST APL - 01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.

b) The grounds of appeal and the form of verification as contained in FORM GST APL -01 shall be signed in the manner specified in rule 26.

c) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule(1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL -02 by the Appellate Authority or an officer authorized by him in this behalf:

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

iii) In the appellant's case, the order of cancellation of registration has been communicated to the appellants on 24.03.2022 through online. The appellants had time till 23.06.2022 to file appeal against the order of cancellation before this forum. Further as per Section 107(4) of the TNGST Act, 2017 the appellant also had one month time for sufficient cause from non-presenting the appeal within the period of three months as per section 107(1) of the TNGST Act. Such time of further one month also expired on 23.07.2022

(v) The appellant has filed the appeal before this forum only on 09.11.2022 by a further delay of three months seventeen days. In view of the above reasons, the appeal petition filed by you could not be entertained and therefore returned.

Deputy Commissioner (ST)
GST-APPEAL, CHENNAI-I
Chennai - 600 006

To,
Tvl. Hunter Shipping & Trading,
1st Floor, Room No.102, Door No.33,
Rattan Complex, Moore Street,
Parrys, Chennai-600 001

8. A careful perusal of the order of the original authority brings to light that there appears to be some kind of secretarial muddle in paragraph No.1, particularly in the sentence which reads as follows:

> *'Hence Department Initiated Cancellation is proceeding is not approved.'*

9. The captioned matter was passed over to enable the learned Revenue counsel to get instructions.

10. In the second call, learned Revenue counsel, on instructions, submitted that the aforementioned order of the original authority (second respondent) is now withdrawn. This submission is recorded.

11. Learned Revenue counsel also submits that the portal is active qua writ petitioner.

12. Learned counsel on record for writ petitioner, on instructions, submits that the writ petitioner is able to go into the portal with writ petitioner's credentials and it is active.

13. The above trajectory drops the curtains on the captioned writ petition.

14. Captioned Writ Petition is disposed of recording the aforementioned trajectory that unfurled in the Admission Board today albeit making it clear that all the rights and contentions of both sides stand preserved if the second respondent chooses to issue a show cause notice afresh, if so desired and if so advised.

M.SUNDAR, J.,

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15. Captioned Writ Petition is disposed of in the aforesaid manner.

There shall be no order as to costs.

11.01.2023

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

mk

To

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