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W.P.No.33269 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.11.2023

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.33269 of 2023

C.Chinnathambi

... Petitioner

Vs.

The Assistant Commissioner,
Rasipuram.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in Ref.No.ZA3302230026917 and quash the proceedings dated 01.02.2023 passed therein and further direct the respondent to restore the petitioner's Registration No.33BGWPC5103K1ZE granted under the CGST Act, 2017.

For Petitioner : Mr.B.Raveendran

For Respondent : Ms.Amirta Dinakaran,
Government Advocate



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ORDER

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This writ petition has been filed challenging the proceedings dated 01.02.2023 and further, to direct the respondent to restore the petitioner's GST Registration.

2. Ms.Amirta Dinakaran, learned Government Advocate, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that the issue involved in the present writ petition has been covered by the judgement of this Court in W.P.No.25048 of 2021 dated 23.09.2021 and the said writ petition is allowed by this Court. Hence, he prayed for allowing this writ petition.

4. In reply, the learned counsel for the respondent would submit that considering the facts and circumstances of the case, an appropriate order may be passed by this Court.



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5. Heard the learned counsel for the petitioner and the respondent

and also perused the materials available on record.

6. It appears that the present issue was already covered by the aforesaid judgement of this Court in W.P.No.25048 of 2021 and the relevant portion is extracted hereunder:

“202. Meanwhile, the Hon’ble Supreme Court taking note of the hardship faced by the litigants had also extended the limitation by its orders dated 23.03.2020, 08.04.2021, 27.04.2021 & 23.09.2021 in Recognizance of Extension of Limitation Vs. xxxx, in Miscellaneous Application No.665/2021 in SMW(C) No.3/2020.

203. In its order dated 23.09.2021 in the above case, 2021 SCC OnLine SC 947, the Hon’ble Supreme Court held as under:-

Therefore, we dispose of the M.A. No. 665 of 2021 with the following directions:—

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.



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II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

IV. The Government of India shall amend the guidelines for containment zones, to state. "Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

204. This Court, by its order dated 22.09.2021 in Tvl.Sunpenta Mining Service Private Limited Vs. The Assistant Commissioner (ST), Salem, in W.P.Nos.20083



and 20086 of 2021, and order dated 01.10.2021, in Suresh Trading Corporation Vs. The Asst. Commissioner (Circle) of SGST, Coimbatore II, in W.P.No.21109 of 2021, granted time for filing fresh application for revocation of the cancellation of registration.

205. Though the Clarifications and Notifications have been issued in a staggered manner by rising to the occasions to facilitate the industries to come back to the GST fold, gap however still continued to haunt these petitioners under the statute. The cases of the petitioners are now beyond the clarifications and relaxation referred to supra.

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



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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 said 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 between 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-recognised assesses 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 revocation of 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 main 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 of the GST regime is a self defeating move as no tax will get paid on the supplies of these petitioners.*

212. *May be, organised companies who comply with the requirement of GST enactments may not give business with these petitioners. However, by keeping the petitioners out of the bounds of GST law, purpose of the Act will not be achieved. It will also not mean that the petitioners will not do business ie., of either supplying*



goods or service in the unorganised sector. They will still do their business, may be surreptitiously and clandestinely.

213. They may perhaps not get opportunity to supply goods or services to established players. They may still supply to smaller players who may not be keen on GST compliance by the petitioners.

214. By not allowing the petitioners to revive their registration is to de-recognise a whole lot of entrepreneurs and to not to collect GST at all from them.

215. It will only strain the system, as these petitioners will continue to carry on their business and supply goods and service and/or end up not paying the GST under the respective GST enactments. It will lead to loss of revenue to the Government which is not intended when these enactments were enacted.

216. Since, no useful will be served by not allowing persons like the petitioners to revive their registration and integrate them back into the main stream, I am of the view that the impugned orders are liable to be quashed and with few safeguards.

217. There are adequate safeguards under the GST enactments which can also be pressed against these petitioners even if their registration are revived so that,



there is no abuse by these petitioners and there is enough deterrence against default in either paying tax or in complying with the procedures of filing returns.

218. Further, the Government requires tax to meet its expenditure. By not bringing these petitioners within the GST fold, unintended privilege may be conferred on these petitioners unfairly to not to pay GST should they end supplying goods and/or services without registration. For example, a person renting out an immoveable property will continue to supply such service irrespective of registration or not.

219. Therefore, if such a person is not allowed to revive the registration, the GST will not be paid, unless of course, the recipient is liable to pay tax on reverse charge basis. Otherwise, also there will be no payment of value added tax. The ultimate goal under the GST regime will stand defeated. Therefore, these petitioners deserve a right to come back into the GST fold and carry on their trade and business in a legitimate manner.

220. 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-recognised assesses from coming back into the GST fold.”

7. In view of the above, this Court is inclined to allow this petition. While allowing this petition, it is made clear that if the petitioner is liable to pay any tax or penalty, he is required to pay the same in accordance with law.

8. In the result, this writ petition is allowed and the impugned proceedings dated 01.02.2023 is hereby set aside. Further, the respondent is directed to restore the GST registration of the petitioner.

27.11.2023

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

To

The Assistant Commissioner,
Rasipuram.



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KRISHNAN RAMASAMY.J.,

nsa

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