BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.03.2023**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.5576 of 2023
and
W.M.P.(MD) Nos.5204 and 5205 of 2023

Rajendran Pari ... Petitioner

/vs./

1.The Additional Commissioner (Appeals),
Office of the Commissioner of GST & Excise (Appeals),
Coimbatore Circuit Office @ Tiruchirapalli,
No.1, Williams Road,
Cantonment,
Tiruchirapalli 620 001.

2.The Superintendent of GST & C.Excise,
Woraiyur City -3 Range,
No.4, Lal Bahadur Shastri Road,
C.R.Buildings,
Madurai 625 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 2nd respondent in Reference No.ZA330522083893E dated 20.05.2022 and order passed by the 1st respondent in Order in Appeal No.TRY-CGST-ADC-APP-083 to 086 dated 16.12.2022 and to quash the both as illegal, arbitrary and direct the respondents to revoke the cancellation of petitioner's GSTN Registration No.33CUTPP4954M1ZP within such time as may be directed by this Court.

For Petitioner : Mr.N.Sudalaimuthu

For Respondents : Mr.R.Nandhakumar
Senior Panel Counsel assisted by
Mrs.S.Ragavendhree
Junior Panel Counsel

ORDER

This writ petition has been filed to direct the respondents to revoke the cancellation of GSTN registration and restore the same.

2.It is the case of the petitioner that they have failed to file return for six or more GSTR -3B monthly returns. Hence, the second respondent has cancelled the GST registration of the petitioner by order dated 20.05.2022 with effect from 20.05.2022. Aggrieved by which the petitioner is before this Court.

3. It is submitted by the learned counsel for the petitioner that due to health issues and family commitments, the GST monthly returns were not filed continuously. Due to the above reasons, the petitioner was not able to file an appeal in time as stipulated under the Act against the cancellation of the registration.

4.In identical circumstances, this Court, in the case of ***Tvl.Suguna Cutpiece Vs The Appellate Deputy Commissioner (ST) (GST) and others (W.P.Nos.25048, 25877, 12738 of 2021 etc., batch)***, dated 31.01.2022, issued the following directions:

> *"229. In the light of the above discussion, these Writ Petitions are allowed subject to the following conditions:*
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> *i. The petitioners are directed to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of forty five (45) days from the date of receipt of a copy of this order, if it has not been already paid.*
>
> *ii. It is made clear that such payment of Tax, Interest, fine /*

fee and etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.

iii. If any Input Tax Credit has remained utilized, it shall not be utilised until it is scrutinized and approved by an appropriate or a competent officer of the Department.

iv. Only such approved Input Tax Credit shall be allowed for being utilized thereafter for discharging future tax liability under the Act and Rule.

v. The petitioners shall also pay GST and file the returns for the period subsequent to the cancellation of the registration by declaring the correct value of supplies and payment of GST shall also be in cash.

vi. If any Input Tax Credit was earned, it shall be allowed to be utilised only after scrutinising and approving by the respondents or any other competent authority.

vii. The respondents may also impose such restrictions / limitation on petitioners as may be warranted to ensure that there is no undue passing of Input Tax Credit pending such exercise and to ensure that there is no violation or an attempt to do bill trading by taking advantage of this order.

viii. On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.

ix. The respondents shall take suitable steps by instructing

GST Network, New Delhi to make suitable changes in the architecture of the GST Web portal to allow these petitioners to file their returns and to pay the tax/penalty/fine.

x. The above exercise shall be carried out by the respondents within a period of thirty (30) days from the date of receipt of a copy of this order.

xi. No cost.

xii. Consequently, connected Miscellaneous Petitions are closed."

The same has been consistently thereafter followed by this Court in various decisions, viz.,

a) ***M/s.Maaruthi Foundations Private Limited Vs Deputy Commissioner (ST) (FAC),*** reported in ***2022 (5) TMI 405;***

b) ***J.Jayakrishnan Vs The Additional Chief Secretary/Commissioner of Commercial Taxes, Chennai*** reported in ***2022 (7) TMI 1226;***

c) ***TVL.Jeyalakshmi Store represented by its Proprietor, Sivanu Pandian Vs Commissioner of Commercial Taxes*** reported in ***2022 (7) TMI 1275;*** and

d) ***M/s.Pearl and Company Vs The Commissioner of Commercial Taxes*** in W.P(MD)No.19127 of 2022.

5.In view of the fact that this Court has been consistently following the directions issued in the case of ***Tvl.Suguna Cutpiece Vs Appellate Deputy Commissioner (ST) (GST) and others (W.P.Nos.25048, 25877, 12738 of 2021 etc., batch)*** and the Revenue/Department has also accepted the said view as evident from the fact that no appeal has been filed in any of the matters, this Court intends to follow the above order of this Court.

6.In view of the same, this Court feels that the benefit extended by this Court in the earlier orders referred to above in ***Suguna Cutpiece Centre's case*** cited supra, may be extended to the Petitioner.

7.This Writ Petition is ordered on the same terms mentioned in paragraph 229 of the order of Suguna Cutpiece Centre (cited supra). No costs. Consequently, connected Miscellaneous Petitions are closed.

21.03.2023

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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P.T.ASHA, J.

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