



WP(MD)No.6157/2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2023

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

WP(MD)No.6157/2023

R.A.Enterprises,
Rep. by its Proprietor Vanangamudi,
No.5/49L8 6/852, Rajiv Nagar 1st street, Tuticorin.

... Petitioner

Vs.

1.The Deputy Commissioner (ST),
(GST Appeal),
Madurai & Tirunelveli,
Tirunelveli Camp Office
2.The Assistant Commissioner (ST) (Circle)
Tuticorin II Assessment Circle,
Commercial Tax Buildings,
Tuticorin.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order of the second respondent in Reference No.ZA330322025749N, dated 07.03.2022 and quash the same as arbitrary and in violation of the principles of natural justice and consequently direct the respondents to revoke the cancellation of petitioner's GSTIN/UIN :33AFTPV7837E1ZT under Tamil Nadu Goods and Services Tax Act 2017 within a time frame.



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For Petitioner : Mr.V.Vishnu
For Respondents : Mr.M.Prakash,
Additional Government Pleader

ORDER

The writ petition is filed for a certiorarified mandamus to quash the order of the second respondent dated 07.03.2022 and direct the respondents to revoke the cancellation of the petitioner's Registration Number under the Tamil Nadu Goods and Services Tax Act, 2017.

2. The case of the petitioner is that he is a sub contractor, taking orders like sandblasting and painting from the main contractors. He is a regular tax payer under Tamil Nadu Goods and Services Tax Act, 2017 (herein after referred as 'the Act') and he is assigned with GSTIN: 33AFTPV7837E1ZT. A show cause notice dated 03.02.2022 was issued by the second respondent, calling upon the petitioner to submit his explanation, for cancellation of the GST Registration, since the petitioner had not filed GSTR-3B for a continuous period of six months under Section 29(2)(c) of the Act. Since the main contractor had not released



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the payment for the work done, the petitioner has suffered from shortage of funds and therefore, he has not complied with the show cause notice within the given time. As a result, the second respondent had passed an order for cancellation of the petitioner's Registration Number. The representation made by the petitioner on 13.08.2022 before the Appellate Authority did not evoke any result. Therefore, the petitioner is before this Court.

3. The learned counsel for the petitioner would rely upon the decision of the Principal Bench of this Court in *Tvl.Suguna Cutpiece vs. Appellate Deputy Commissioner (ST) (GST) and others in WP.Nos. 25048, 25877, 12738 of 2021, etc. batch, dated 31.01.2022*, wherein, it is held that no useful purpose would be served by keeping the petitioners out of the Goods and Services Tax regime, as such assessee would still continue to do business and supply goods and services.

4. The relevant paragraphs in WP.Nos.25048, 25877, 12738 of 2021, etc. batch, are extracted hereunder:



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"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



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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.



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221. *While exercising jurisdiction, under Article 226 of the Constitution, the powers of the Court to do justice i.e., what is good for the society, can neither be restricted nor curtailed. This power under Article 226 can be exercised to effectuate the rule of law.*

222. *Therefore, power of this Court under Article 226 of the Constitution of India is being exercised cautiously in favour of the petitioners as this power is conceived to serve the ends of law and not to transgress them.*

223. *In Mafatlal Industries Ltd. Vs. Union of India, (1997) 5 SCC 536, in Paragraph No.77, the Hon?ble Supreme Court observed that ?So far as the jurisdiction of the High Court under Article 226 ? or for that matter, the jurisdiction of this Court under Article 32 ? is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take*



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note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it.

224. Notwithstanding the fact that the petitioners have shown utter disregard to the provisions of the Acts and have failed to take advantage of the amnesty scheme given to revive their registration, this Court is inclined to quash the impugned orders with grant consequential reliefs subject to terms.

225. The provisions of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of the defect in the scheme of the GST enactments. The right to carry on trade or profession also cannot be curtailed. Only reasonable restriction can be



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imposed. To deny such rights would militate against their rights under Article 14, read with Article 19 (1)(g) and Article 21 of the Constitution of India.

226. As original or as appellate authority exercising power under the respective enactments, quasi judicial officers were bound by the provisions of the Act and the limitation under it, they have acted in accordance with law. They cannot look beyond the limitations prescribed under provisions of the Act. Therefore, no fault can be attributed to their action.

227. This is a fit case for exercising the power under Article 226 of the Constitution of India in favour of the petitioners by quashing the impugned orders and to grant consequential relief to the petitioners. By doing so, the Court is effectuating the object under the GST enactment of levying and collecting just tax from every assessee who either supplies goods or service. Legitimate Trade and



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Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance. Therefore, the impugned orders deserve to be quashed.

228. These petitioners deserve a chance and therefore should be allowed to revive their registration so that they can proceed to regularize 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.

229. In the light of the above discussion, these Writ Petitions are allowed subject to the following conditions:~

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



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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.



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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.



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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."

5. Since the issues are similar in nature, the writ petition is disposed of in terms of the Order dated 31.01.2022 passed by the Principal Bench of this Court in WP.Nos.25048, 25877, 12738 of 2021, etc. batch. No costs.

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NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order
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