BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.5944 of 2023
and
W.M.P.(MD) Nos.5523 and 5524 of 2023

M/s.Mani Enterprises,
Rep., by its Partner, V.Jerusha Ebenezer,
GSTN No.33ABLFM8326M1ZS,
No.2, 1st and 2nd Floor, Vaduga Thattara Santhu,
East Masi Street, Madurai Town,
Tamilnadu-625 001. .. Petitioner

Vs.

1.The Additional Commissioner of GST (Appeals),
Office of the Commissioner of GST & C.Excise (Appeals),
Coimbatore, Circuit Office @ Madurai,
No.4, Lal Bahadur Shastri Road,
C.R.Buildings, Madurai-625 002.

2.The Superintendent of CGST & C.Excise,
Madurai City Range, Madurai Rural (East),
No.4, Lal Bahadur Shastri Road,
C.R.Buildings, Madurai-625 002. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in Reference No.

ZA3305220897857 dated 23.05.2022 and order passed by the 1st respondent in Order in Appeal No. 01 to 03/2023-GST(ADC) CBE dated 27.01.2023 and to quash the both as illegal, arbitrary and direct the respondents to revoke the cancellation of petitioner's GSTN Reg No. 33ABLFM8326M1ZS within a time stipulated by this Court.

For Petitioner	:	Mr.S.Karunakar
For Respondents	:	Mr.N.Dilipkumar Senior Standing Counsel assisted by Mr.K.Prabhu Junior Standing Counsel

ORDER

The above writ petition is filed to quash the order of the second respondent dated 23.05.2022 in and by which, the petitioner's GST Registration was cancelled and the order of the first respondent dated 27.01.2023 and for a direction to the respondents to revoke the cancellation of the petitioner's GSTN Registration.

2. The case of the petitioner Company is that they have been engaged in the business of manufacturing Siddha medicines. They have enrolled under the Central Goods and Service Tax Act, 2017 in GSTIN: 33ABLFM8326M1ZS. The petitioner Company have been

regular in uploading the monthly returns in GSTR-3B within the due dates and have also paid the GST on time. They have also filed GSTR-1 returns within the due time. The returns were filed through GST portal online. The petitioner concern, not being proficient in accounts and GST matters, were solely depending upon their part time Accountant to upload these details/forms. While so, the petitioner Company was informed in 2022 that the GST Registration has been cancelled and therefore, they were not able to take the Input Tax Credit on the amount disbursed to them. The petitioner Company, on verification, came to know that the part time accountant had not filed GST monthly returns for over 6 months and the GST Registration was cancelled with effect from 20.05.2022. Therefore, the petitioner Company left with no other option, has preferred an appeal before the first respondent, after filing returns and paying the entire dues mentioned in the impugned order of cancellation till the date of cancellation. However, the appeal was rejected vide order dated 27.01.2023 on the ground that the request for revocation was not filed within the statutory limitation of 90 (30+60) days. Hence, the petitioner is before this Court.

3. The learned counsel for the petitioner Company would rely upon the decision of the Principal Bench of this Court in ***Tvl.Suguna Cutpiece vs. Appellate Deputy Commissioner (ST) (GST) and others*** reported in ***2022 (2) TMI 933,*** wherein, it was 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 learned Senior Standing Counsel for the respondents would also admit that the above referred order is being followed in similar matters.

5. The relevant paragraphs of the said order are extracted hereunder:

> *"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.*

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 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 professoin also cannot be curtailed. Only reasonable restriction can be 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 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 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."

6. Since the issue involved in this writ petition is similar, the writ petition is allowed in terms of the guidelines provided in the order in ***Tvl.Suguna Cutpiece vs. Appellate Deputy Commissioner (ST) (GST) and others*** *(cited supra).* No costs. Consequently, connected miscellaneous petitions are closed.

27.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

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To

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Office of the Commissioner of GST & C.Excise (Appeals),
Coimbatore, Circuit Office @ Madurai,
No.4, Lal Bahadur Shastri Road,
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2.The Superintendent of CGST & C.Excise,
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P.T.ASHA, J.

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