BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.15504 of 2023

Raman Subash ... Petitioner

Vs.

The Superintendent of CGST & C.Excise
Madurai Rural South,
Madurai City Range,
No.4, Lal Bahadur Shastri Road,
C.R.Buildings,
Madurai – 625 002. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in Reference No. ZA330123054349S dated 12.01.2023 and to quash the same as illegal, arbitrary, and direct the respondents to revoke the cancellation of petitioner GSTN registration No. 33KYSPS7763C1ZN within such time as may be directed by this Court.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.R.Nandakumar,
Senior Standing Counsel,
Assisted by,
Mr.S.Ragaventhre,
Junior Standing Counsel.

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the cancellation order dated 12.01.2023 passed in Reference No. ZA330123054349S by the respondent and to direct the respondent to revoke the cancellation of GSTN Registration No. 33KYSPS7763C1ZN.

2. The petitioner is a Construction Company voluntarily registered under GST with Registration No.33KYSPS7763C1ZN. The petitioner has filed returns through an accountant, but due to ill health he could not follow the filing of returns for the past six months. The contention of the petitioner is that the said accountant was instructed to file NIL returns but he failed to file the returns for the past six months. The other end tax payers had informed the petitioner that his registration is cancelled, then only it came to the knowledge that the respondent issued show cause notice dated 03.01.2023 in the web portal and had cancelled the GST registration stating that the petitioner had not filed GST returns for the past six months. The further contention of the petitioner is that the period from 15.03.2020 to 28.02.2022 is excluded for the purpose of calculating limitation in the Suo Motu petition by Hon'ble Supreme Court. In the batch of writ petitions filed in W.P.Nos.25048, 25877, 12738 of

2021 before the High Court of Madras in the case of *Tvl.Suguna Cut piece Vs Appellate Deputy Commissioner (ST) (GST)* has condoned the delay in revoking the cancelled GSTN registration. Recently the Government of India has issued Notification No.03/2023-Central Tax dated 31.03.2023 and has extended the time up to 30.06.2023, but the extension is granted to taxpayers granting time on or before 31.12.2022. The petitioner's cancellation is on 12.01.2023, hence the benefits of the said notification could not be availed by the petitioner. The petitioner has already filed GST monthly returns upto January 2023 and had paid necessary late fee and for the remaining period from February 2023, the petitioner could not upload the returns since the registration is cancelled. If the cancellation is set aside and the GST is revoked the petitioner is willing to pay the GST along with late fee.

3. The further contention of the petitioner is that the show cause notice, dated 03.01.2023, was issued but the petitioner is not proficient in compute access, hence he failed to notice the show cause notice. After issuing the show cause notice, the respondent has cancelled the registration. The contention of the petitioner is that the impugned order is bereft of any details. In the meanwhile, the respondent has issued amnesty scheme but the petitioner could not avail the benefit because of the cancellation of the registration of GST.

4. On perusal of the impugned order, dated 12.01.2023, it is seen that the respondent has cited the reason that the petitioner has not responded within stipulated time and the relevant portion is extracted hereunder:

> "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 reasons:
> The tax payer has not filed the GST Returns for the past 6 months. Hence suo moto cancel initiated. SCN dated 03.01.2023 was issued to the TP. The TP did not turn up and comes under "Response Not Received" Hence, cancelled the RC."

5. The contention of the petitioner is that he could not reply the show cause notice, since the show cause notice was issued to email and he is not proficient in computer. It was explained at the time of hearing but the respondent has not accepted the same.

6. After hearing the rival submission, this Court has given its anxious consideration. It is seen from the records that the Government has issued Notification No.03/2023-Central Tax dated 31.03.2023 and has extended the time up to 30.06.2023, but the extension is granted to taxpayers granting time on or before 31.12.2022. Unfortunately, the petitioner's cancellation was on 03.01.2023, had it been prior to 31.12.2022 then the petitioner would have come within the time prescribed under the said notification. But the

consideration for extension was pending during that period, hence this Court is of the considered that the petitioner is entitled to the benefit. Moreover, the issue is covered under the judgment of Tvl. Suguna Cut Piece's case as stated supra.

7. Therefore, this Court is allowing the writ petition and the respondent is directed to restore the petitioner's GST registration number.

8. After restoration, the petitioner is directed to file the returns and pay tax and penalty as per law.

9. With the above said direction, the writ petition is allowed. No costs.

18.07.2023

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

To

The Superintendent of CGST & C.Excise
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S.SRIMATHY, J.

Nsr

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