BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.15425 of 2023

Mohamed Nainar Salamath,
Proprietor of M/s.Abban Construction
Company,
GSTN 33AJIPS9491G3ZM,
5/24-1, Laws Ghat Road,
Kodaikanal-624 101. ... Petitioner

vs.

The Superintendent of CGST and C.Excise,
Kodaikanal,
Dindigul-I 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 for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in Reference No. ZA330123150080F, dated 27.01.2023 and to quash the same as illegal, arbitrary and to direct the respondent to revoke the cancellation of petitioners GSTN registration No.33AJIPS9491G3ZM within such time as may be directed by this Court.

For Petitioner : Mr.N.Sudalaimuthu
For Respondent : Mr.N.Dilip Kumar
Senior Standing Counsel
assisted by Mr.K.Prabhu
Junior Standing Counsel
*****

O R D E R

This writ petition is filed for writ of Certiorarified Mandamus, to quash the cancellation order dated 27.01.2023 passed in Reference No. ZA330123150080F by the respondent and to direct the respondent to revoke the cancellation of GSTN Registration No.33AJIPS9491G3ZM within such time as may be directed by this Court.

2. The petitioner is a Construction Company voluntarily registered under GST with Registration No.33AJIPS9491G3ZM. 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 08.10.2022 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 13.03.2020 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 08.10.2022, was issued to the petitioner's Charted Accountant and the petitioner has not received the show cause notice. After issuing the show cause notice, the respondent has cancelled the registration. When the petitioner came to know about the show cause notice, he submitted a reply on 08.11.2022. The respondent was not satisfied with the reply and has cancelled the GST registration with effect from 27.01.2023. 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 27.01.2023, 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 replied or responded within a stipulated time. Hence, the registration is cancelled suo moto."*

5.The contention of the petitioner is that he could not reply the show cause notice, since the show cause notice was issued to the Auditor's e-mail and he has not received the show cause notice. 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 12.01.2023, 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 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.

Index : Yes / No **07.07.2023**
Internet : Yes
NCC : Yes / No

Tmg

S.SRIMATHY, J

Tmg

W.P.(MD)No.15425 of 2023

07.07.2023