BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2023

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

W.P.(MD)No. 22148 of 2023

Tvl.A SDM RESIDENCY ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600005.

2.The Assistant Commissioner,
K K Nagar Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625020. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, or any other appropriate Writ or any Order or direction in the nature of to call for the records pertaining to the impugned order of the 2nd Respondent in Reference No.ZA3301233134745V dated 24/01/2023 with effect from 31/01/2022 and quash the same and consequently direct the respondents to revoke the cancellation of petitioner's GSTIN.33ABIFA9538J1Z5.

For Petitioner : Mr. R.Veeramanikandan

For Respondents : Mr. A.K.Manikkam
Special Government Pleader

ORDER

This writ petition is filed to quash the impugned order of the 2nd Respondent in Reference No.ZA3301233134745V, dated 24.01.2023 with effect from 31.01.2022 with a consequential direction to the respondents to revoke the cancellation of petitioner's GSTIN.33ABIFA9538J1Z5.

2. Heard Mr. R.Veeramanikandan, the Learned counsel appearing for the petitioner and Mr.A.K.Manikkam, the Learned Special Government Pleader appearing for the Respondents and perused the material documents available on record. With consent of both the parties this writ petition is taken up for final disposal at the admission stage itself.

3. It is submitted by the learned counsel for the Petitioner that the Petitioner was unaware of the cancellation of the Registration Certificate and after some time, the petitioner was informed by the other end tax payers that the petitioner became aware that his GSTN registration stood cancelled. Thereafter, the Petitioner preferred an appeal before the appellate authority. The appellate authority has rejected the appeal on the ground that it was beyond the period of limitation.

4. It is submitted by the learned counsel for the petitioner that in identical circumstances, this Court, 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), 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.

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

5. It is also submitted by the learned Special Government Pleader appearing for the Respondents that it is not open to the appellate authority to pass any orders disregarding the limitations prescribed therein. The respondents are bound by the limitations prescribed and hence the rejection of the appeal admittedly beyond the period of limitation is legally sustainable.

6. As stated above, there is a consistent view taken in these matters. The revenue has not challenged any of such orders of this Court and hence the orders have attained finality. 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.

7. In view of the same, this Court is of the considered opinion 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.

8. This writ petition is allowed on the same terms mentioned in paragraph 229 of the order of ***Suguna Cutpiece Centre*** as extracted supra. No costs.

Index : Yes / No **12.09.2023**
Internet : Yes
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To

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of Commercial Taxes,
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S.SRIMATHY. J

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Order made in
W.P.(MD)No. 22148 of 2023

12.09.2023