BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.22967 of 2023

M/s.Atheefa Mathiyastha Kadai Jewellery,
Represented by its Proprietor,
S.Magdum Mohammed Kasi, ... Petitioner

Vs.

The Assistant Commissioner (ST),
Tenkasi Assessment Circle,
Tenkasi. ... 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 of the respondent in his proceedings in Reference Number: ZA330822089689V dated 25.08.2022 and quash the same and further direct the respondent to revoke the cancellation of the Registration Certificate under the GST Act bearing GSTIN/UIN: 33BHXPM6489C1ZR.

For Petitioner : Mr.A.Satheesh Murugan

For Respondent : Mr.B.Saravanan,
Additional Government Pleader.

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the cancellation order dated 25.08.2022 passed in Reference No. ZA330822089689V by the respondent and to direct the respondent to revoke the cancellation of GSTIN/UIN: 33BHXPM6489C1ZR.

2. The petitioner is proprietor of M/s.Atheefa Mathiyastha Kadai Jewellery, voluntarily registered under GST with Registration No.GSTIN/UIN: 33BHXPM6489C1ZR. The petitioner has filed returns through an accountant. 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. But due to ill health the petitioner could not follow the filing of returns for the past six months. Moreover, the petitioner had incurred huge financial loss. 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 08.08.2022 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 31.07.2022. Since the petitioner was not aware of the said notification, he could not avail the benefits of the said notification. 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 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 25.08.2022, 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:*
>
> *1. The dealer has not response to SCN nor appeared for personal hearing."*

The contention of the petitioner is that he could not reply to the system generated show cause notice due to bona fide reasons. It was explained at the time of hearing but the respondent has not accepted the same.

5. 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 could not avail the benefit of the said notification since he was not aware of the said notification. Hence this Court is of the considered that the petitioner is entitled to be considered for the said benefit. Moreover, the issue is covered under the judgment of *Tvl. Suguna Cut Piece's case* stated supra.

6. Therefore, the impugned order is quashed and the respondent is directed to restore the petitioner's GST registration number. After restoration, the petitioner is directed to file the returns and pay tax and penalty as per law.

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

21.09.2023

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

To

The Assistant Commissioner (ST),
Tenkasi Assessment Circle,
Tenkasi.

S.SRIMATHY, J.

Nsr

W.P.(MD).No.22967 of 2023

21.09.2023