BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2023

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

W.P.(MD)No. 23414 of 2023
and
W.M.P(MD)No.19631 of 2023

M/s.Aaradhana Homes,
Represented by its Proprietor V.Ramamoorthy ... Petitioner

- Vs. -

The Commercial Tax Officer,
Melur Assessment Circle,
Madurai. ... 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 of the Respondent in his proceedings in Reference Number ZA330223128148X, dated 24.02.2023 and quash the same and further direct the respondent to revoke the cancellation of the Registration under the GST Act bearing GSTIN/UIN. 33ALXPR3833JIZH.

For Petitioner : Mr.K.Srinivasan

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

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the cancellation order, dated 24.02.2023 passed in Reference No. ZA330223128148X by the respondent and to direct the respondent to revoke the cancellation of GSTN Registration No. GSTIN/UIN. 33ALXPR3833JIZH within such time as may be directed by this Court.

2. Heard Mr.Srinivasan, the Learned counsel appearing for the Petitioner, Mr.A.K.Manikkam, the Learned Special Government Pleader appearing for the respondent and perused the material documents available on record. With their consent, the writ petition is taken up for final disposal at the admission stage itself.

3. The petitioner has voluntarily registered under GST with Registration No.ZA330223128148X. The petitioner has not filed returns continuously for six months due to heavy financial crisis. The contention of the petitioner is that after recovered from the financial crisis and tried to file the returns and pay tax due, the respondent has cancelled his registration from 01.04.2022. The petitioner is not able to file reply to the system generated show cause notice.

4. 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.

5. The further contention of the petitioner is that the show cause notice, dated 15.01.2023, was issued in the web portal. 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.

6. On perusal of the impugned order, dated 24.02.2023, 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 no reply to notice to show cause has been submitted."

7. The tax payer has not replied or responded within a stipulated time. Hence, the registration is cancelled suo moto.

8. The contention of the petitioner is that he could not reply the show cause notice, since the show cause notice was issued in the web portal.

9. 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 16.02.2023, 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.

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

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

12. With the above said direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2023

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

To

The Commercial Tax Officer,
Melur Assessment Circle,
Madurai.

S.SRIMATHY, J

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Order made in
W.P.(MD)No. 23414 of 2023

26.09.2023