BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.23675 of 2023

Bandarupalli Srinivasa Rao,
GSTIN:33BSKPS62665C1ZL,
161-4/3, Main Road, Nanguneri,
Tirunelveli, Tamil Nadu 627 11. ... Petitioner

Vs.

The Commercial Tax Officer,
Nanguneri Assessment Circle,
Commercial Tax Buildings,
Nanguneri. ... 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.ZA330423049846F dated 12.04.2023 and to quash the same as illegal, arbitrary and to direct the respondents to revoke the cancellation of petitioner's GSTN registration No 33BSKPS6265C1ZL within such time as may be directed by this Court.

For Petitioner	:	Mr.N.Sudalaimuthu
For Respondent	:	Mr.A.K.Manikkam Special Government Pleader

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ORDER

This writ petition is filed for writ of ***Certiorarified Mandamus,*** to quash the impugned order dated 12.04.2023 passed by respondent in Reference No.ZA330423049846F as illegal, arbitrary and to direct the respondents to revoke the cancellation of petitioner's GSTN registration No 33BSKPS6265C1ZL within such time as may be directed by this Court.

2. The petitioner was engaged in execution of civil works especially for Government of India especially for Defense Ministry for INS Kattapomman, Vijayanarayanam and Mandapam Phase and is having GST number. The petitioner engaged a part time accountant to upload the returns, since the petitioner is not having proficiency in computer. In the meanwhile, the petitioner fell sick and the part time accountant failed in uploading the returns,

but the petitioner was under the bonafide belief that the returns are being filed. When the other end users informed the petitioner that the GST registration was cancelled, then only the petitioner came to know of the cancellation of registration is due to non-filing of returns.

3. The petitioner submitted that the petitioner is executing civil works in the site of in the military campus itself and the administrative office is functioning with few persons only. When the civil work is being carry out the entire team would be in the site and the office would be closed and the same cannot be termed as Non-Functioning / Non-Existing tax payer. On the date when the respondent visited the registration office of the petitioner, the same was closed.

4. 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 12.04.2023, hence the benefits of the said notification could not be availed by the petitioner. The petitioner has already filed GST monthly returns regularly. 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 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 12.04.2023, it is seen that the

respondent has cited the reason that the petitioner has not replied to the show cause notice and did not appear on the date of hearing. The relevant portion of the order is extracted hereunder:

> *"This has reference to your reply dated 18/03/2023 in response to the notice to show cause dated 08/03/2023*
> *Whereas no reply to notice to show cause has been submitted;*
>
> *Whereas on the day fixed for hearing you did not appear,*
> *The effective date of cancellation of your registration is 28/02/2023"*

7. 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, hence the petitioner could not avail the benefits of the notification. Hence this Court is of the considered that the petitioner is entitled to the

benefit. Moreover, the issue is covered under the order of ***Tvl. Suguna Cut Piece's*** case stated supra.

8. Therefore, this Court is allowing the writ petition 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.

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

27.09.2023

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

Tmg

To

The Commercial Tax Officer,
Nanguneri Assessment Circle,
Commercial Tax Buildings,
Nanguneri.

S.SRIMATHY, J.

Tmg

W.P.(MD).No.23675 of 2023

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