IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.02.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.4852 of 2024
and W.M.P.No.5296 of 2024

M/s.R.J.Manpower Consultancy,
Represented by its Proprietor Vakati Ravi Rajalakshmi,
No.4/7, Baroda Street, West Mambalam,
Chennai 600 033. ... Petitioner

-vs-

1.The Deputy Commissioner (ST),
Office of the Deputy Commissioner (ST),
GST - Appeal, Chennai - I, C.T.Annexe Building, 3rd Floor,
No.1, Greams Road, Chenai 600 006.

2.The State Tax Officer (Circle) / Assistant Commissioner (ST),
Ashok Nagar Assessment Circle,
Ashok Nagar, Chennai 600 083. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the 2nd respondent order dated 06.07.2022 in Reference Number: ZA3307220231253 and the records of the 1st respondent pertaining to the impugned order dated 23.01.2024 passed in RC.No.1489/2023/A1 and quash the same and consequently direct the respondents to revoke the cancellation of the GST registration of the petitioner's firm.

For Petitioner : Mr.P.Suresh Babu

For Respondents : Mrs.K.Vasanthamala, GA (T)

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ORDER

The petitioner assails an appellate order rejecting the appeal against cancellation of the petitioner's GST registration and also such order of cancellation. The petitioner states that a show cause notice dated 08.11.2022 was received asking the petitioner to show cause as to why his GST registration should not be cancelled. He replied thereto on 09.12.2022 and submitted that he had no business for eleven months and had filed nil returns. The cancellation order was issued thereafter on 18.01.2023. The petitioner states that an appeal was filed against such cancellation order but that such appeal was rejected as being time barred.

2. Learned counsel for the petitioner submits that on account of the rejection of the appeal, the petitioner has no remedy except to approach this Court. He relies on an earlier order of this Court dated 08.02.2024 in W.P.Nos.33227 of 2023 and related matters.

3. Mr.Ramesh Kutty, learned senior standing counsel, accepts notice for the respondents. He points out that the appeal was filed about four months after the last date up to which delay can be condoned. He also points out that it is unclear from the affidavit of the petitioner as to whether returns were filed up to the date of cancellation.

4. The appellate authority cannot be faulted for rejecting the appeal in view of the language of Section 107 of the Central Goods and Services Tax Act, 2017. At the same time, the petitioner should not be left without remedy. The reasons set out in the order of cancellation is non filing of returns for a continuous period of more than six months. In *Suguna Cutpiece v. The Appellate Deputy Commissioner (ST)(GST) and others, W.P.Nos.25048 of 2021 batch*, this Court directed restoration of registration subject to certain conditions. In the over all facts and circumstances, the petitioner is entitled to an order on similar lines.

5. Accordingly, this writ petition is disposed of with the following directions:

i. The petitioner is directed to file returns for the period prior to the cancellation of registration, together with tax dues along with interest thereon and the fee fixed for belated filing of returns within a period of forty five (45) days from the date of receipt of a copy of this order.

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 the petitioner.

iii. If any Input Tax Credit has remained unutilized, it shall not be utilised until it is scrutinized and approved by an appropriate or competent officer of the Department.

iv. Only such approved Input Tax Credit shall be allowed to be utilized thereafter for discharging future tax liability under the Act and Rules.

v. The petitioner 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.

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. On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.

viii. 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 the petitioner to file the returns and to pay the tax / penalty / fine.

ix. 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.

6. The restoration of the GST registration is subject to and conditional upon fulfilling the above conditions.

7. W.P.No.4852 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.No.5296 of 2024 is closed.

28.02.2024

rna
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

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