IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.5383 of 2024
and W.M.P.No.5923 of 2024

M/s.Vijay Enterprises,
Represented by its
Managing Partner
Mr.Santhamaraikannan Kamal
No.21, 2nd Road, 2nd Line, Puliyur,
Trust Puram, Kodambakkam,
Chennai, Tamil Nadu 600 024. ... Petitioner

-vs-

The Assistant Commissioner,
MMDA Colony,
Zone-V, Chennai Central,
Chennai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in Reference Number: ZA330523012348W dated 03.05.2023 and quash the same and consequently direct the respondent to revoke the cancellation of petitioner GSTIN / UIN. 33AAFFV6769A1Z5.

For Petitioner : Mr.A.N.R.Jayaprathap

For Respondent : Mr.V.Prasanth Kiran, GA (T)

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ORDER

The petitioner challenges an order of cancellation of his GST registration. The petitioner is a works contractor for Bharat Heavy Electricals Limited. Pursuant to a show cause notice dated 27.01.2023 stating that the petitioner had not filed GST monthly returns for a continuous period of six months, the impugned order was issued. The petitioner states that he had engaged the services of an accountant for purposes of complying with requirements under GST laws. Therefore, it is stated that he was shocked to receive the order of cancellation. The present writ petition was filed in the said facts and circumstances.

2. Learned counsel for the petitioner submits that the tax returns were filed and taxes due and payable by the petitioner were paid up to the date of cancellation of the GST registration. He further submits that the petitioner was unable to file returns or pay taxes for the subsequent period on account of the portal being inaccessible. In support of restoration of registration, learned counsel relies upon the judgment of this Court in *Suguna Cutpiece v. The Appellate Deputy Commissioner (ST)(GST) and others, W.P.Nos.25048 of 2021 batch (Suguna Cutpiece)*.

3. Mr.V.Prasanth Kiran, learned Government Advocate, accepts notice on behalf of the respondent. He submits that the petitioner appears to have continued to carry on business even after the

cancellation of registration. If so, he submits that it should be left open to the GST authorities to take action in accordance with the statute in respect thereof.

4. In *Suguna Cutpiece*, this Court directed restoration of GST registration subject to several terms and conditions. The said judgment was followed thereafter in many cases. In the over all facts and circumstances, the petitioner is entitled to an order on similar lines. In the operative portion of the said judgment, the following directions were issued:

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.

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

6. Accordingly, W.P.No.5383 of 2024 is disposed of on the same terms by also leaving it open to the respondent to initiate action in accordance with law, if the petitioner had carried on business after

the GST registration was cancelled. No costs. Consequently, W.M.P.No.5923 of 2024 is closed.

04.03.2024

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

To

The Assistant Commissioner,
MMDA Colony,
Zone-V, Chennai Central,
Chennai.

SENTHILKUMAR RAMAMOORTHY,J

rna

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