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W.P.No.6383 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6383 of 2024
and W.M.P.No.5287 of 2024

Nagalingam Gobidass,
No.51, Thiruvalluvar Street,
Jothi Nagar, Kondur,
Cuddalore 607 006.

... Petitioner

-VS-

1.The Additional Commissioner (Appeals)
Office of the Commissioner of GST & Central Excise
(Appeals), Coimbatore,
Trichy Circuit Office,
No.1, Williams Road, Cantonment,
Trichy - 620 001.

2.The Superintendent of GST & Central Excise,
Cuddalore (Taluk),
Cuddalore - I Range,
Cuddalore Division,
Cuddalore.

... Respondents



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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 in his order in Reference No. ZA3312220424154 dated 10.12.2022 and the order of the 1st respondent in Order-in-Appeal No. TRY-CGST-ADC-APP-40/2023 dated 29.09.2023 and quash the same as unjust and unfair, and consequently direct the 2nd respondent to restore the GST Registration of the Petitioner in GST No.33ADVPG4531A2ZW.

For Petitioner : Mr.J.Prasanna Kumar

For Respondents : Mr.Rajinish Pathyil, Sr. SC

ORDER

The petitioner assails an appellate order rejecting the appeal against cancellation of the petitioner's GST registration and also such



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order of cancellation. The petitioner states that a show cause notice dated 09.11.2022 was received asking the petitioner to show cause as to why his GST registration should not be cancelled. He submitted that he was suffering from kidney and heart related issues and that this resulted in non-filing of returns for a continuous period of seven months. The cancellation order was issued thereafter on 10.12.2022. 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 28.02.2024 in W.P.Nos.4846 of 2024 and related matters.

3. Mr.Rajinish Pathyil, learned senior standing counsel, accepts notice for the respondents. He points out that the appeal was filed



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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



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following directions:

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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.



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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



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conditional upon fulfilling the above conditions.

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7. W.P.No.6383 of 2024 is disposed of on the above terms. No costs.

12.03.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

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SENTHILKUMAR RAMAMOORTHY,J

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