IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.9744 of 2024 &
W.M.P.Nos.10782 & 10785 of 2024

Alfa Interiours,
Rep. by its Partner - A Hakkieem,
2/2, Bharathi Nagar,
Kuniamuthur,
Coimbatore - 641 008. ... Petitioner

Vs.

The Superintendent,
Perur,
Coimbatore. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order vide Form GST REG-19, dated 27.01.2024 issued by the respondent and quash the same, and further direct the respondent to restore the GST registration of the petitioner vide GSTIN:33AAYFA2307C1ZT.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.S.Mohanamurali
Senior Standing Counsel

ORDER

This writ petition has been filed to quash the order dated 27.01.2024 issued by the respondent cancelleing the GST Registration of the petitioner and for a direction to restore the GST registration.

2.The learned counsel for the petitioner submitted that the GST registration was cancelled due to non-filing of returns for six months. He would submit that the petitioner's accountant's daughter passed away, resulting in the accountant's inability to manage the GST returns. The petitioner was under the bona fide impression that the accountant would continue handling these returns. The learned counsel would further contend that the petitioner filed returns for December 2022 and January 2023, belatedly with the necessary late fees. However, the respondent issued a show cause notice dated 05.07.2023, stating that the petitioner had not filed returns for a continuous period of six months. The petitioner had actually filed the return for January 2023 on 24.11.2023, along with the applicable interest and late fee. Therefore, the petitioner had only failed to file returns for five months. Despite this, the respondent cancelled the registration retrospectively from 01.02.2023. Therefore, the learned counsel prays for the issuance of an appropriate order.

3. On the other hand, the learned Senior Standing Counsel appearing for the respondent submitted that the petitioner did not file returns for a continuous period of six months, which led to the passing of the impugned order. He further submitted that under Section 39 of the CGST Act, 2017, the assessee is required to file the return within the prescribed period. According to this provision, any delay in filing returns beyond the stipulated time frame can result in non-compliance with the Act.

4. Heard the learned counsel on either side and perused the materials available on record.

5.Admittedly, the GST registration of the petitioner was cancelled due to non-compliance in filing returns. According to the petitioner, they had authorized their accountant to handle the GST returns and had allocated funds for this purpose. The petitioner was under the bona fide belief that the accountant had filed all the returns. However, it was later discovered that the accountant failed to do so due to the death of his daughter. Further, the petitioner subsequently filed the returns belatedly, along with the necessary fees. In the considered opinion of this Court, the reason provided by the petitioner for non-compliance with the relevant provisions of the Act within the stipulated time appears to be genuine.

6. In view of the above, restoration of the GST registration is subject to and conditional upon fulfilling the following conditions :

(i) The respondent 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, within a period of four weeks from the date of receipt of a copy of this order.

(ii) The petitioner is directed to file returns for the period till date, if not filed, together with tax dues along with interest thereon and the fee fixed for belated filing of returns, if not paid, within a period of 4 weeks from the date of restoration of GST Registration of the petitioner.

(iii) It is made clear that such payment of tax, interest, fine/fee etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit (ITC) which may be lying unutilized or unclaimed in the hands of the petitioner.

(iv) If any ITC has remained unutilized, it shall not be utilised until it is scrutinized and approved by an appropriate or competent officer of the Department.

(v) Only such approved ITC shall be allowed to be utilized thereafter for discharging future tax liability under the Act and Rules.

(vi) If any ITC was earned, it shall be allowed to be utilised only after scrutinising and approving by the respondent or any other competent authority.

(vii) If any of the aforesaid conditions is not complied with by the petitioner, the benefit granted under this order will automatically ceased to operate.

(viii) Once the registration is restored, the petitioner is entitled to all the benefits available as if the registration had never been cancelled.

7. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

28.08.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

r n s

To

The Superintendent,
Perur,
Coimbatore.

KRISHNAN RAMASAMY.J.,

r n s

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