IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10991 of 2024
and
W.M.P. No.12071 of 2024

M/s. Aravind Rahul Ceramics,
Rep.by its Partner Jayaraman Sugumar ...Petitioner

Vs

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai – 600 005.

2.The Commissioner – Appellate Authority (ST),
Goods and Service Tax, Chennai.

3.The Assistant Commissioner,
Office of Commercial Tax Office,
Nanganallur, Zone-South III,
Chennai South Division,
Chennai. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for records of third respondent in Ref.No. ZA330823119791J and quash the order dated 25-08-2023 passed by the third respondent consequentially condone the delay of 115 days in preferring an appeal to the third respondent.

For Petitioner : Mr.V.Kaushik Narayanan

For Respondents : Mrs. K. Vasanthamala,
Government Advocate (Tax).

ORDER

The petitioner assails the order of cancellation of GST registration, dated 25.08.2023 passed by the third respondent and further prays that the delay in preferring the appeal against the said order be condoned.

2. The petitioner asserts that on account of the Covid-19 pandemic, the petitioner firm a faced financial crunch and, therefore, the personal assets of the partners of the petitioner firm were sold to settle the dues of the creditors and the bank loan availed of by the petitioner firm. Since the petitioner firm failed to file the GST returns from April 2023, show cause notice dated 21.7.2023 and the order of cancellation of the petitioner's GST registration were issued by the third respondent. The petitioner further states that an appeal was filed on 18.03.2024 as against the order of the third respondent and that the appeal was not entertained.

3. Learned counsel for the petitioner submits that the show cause notice was issued on 21.07.2023 and, thereafter, the impugned order of

cancellation of GST registration was passed. Pursuant thereto, the petitioner filed an appeal before the appellate authority, namely, the second respondent. The said appeal was not considered on the ground that there was a delay in filing the appeal. Having no other option, the petitioner filed the present writ petition. Learned counsel relied upon the earlier orders of this Court in W.P.No.4846 of 2024 etc. On instructions, learned counsel submits that the petitioner has paid tax dues and is ready to file the returns, and that the GST registration may be restored on terms.

4. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondents. She submits that the petitioner had not remitted tax dues for a continuous period of three months after the month of April 2023 and, therefore, the aforesaid show cause notice was issued. She also submits that the order of this Court in *Suguna Cutpiece v. Appellate Deputy Commissioner (ST)(GST) [W.P.Nos.25048 of 2021 batch dated 31.1.2022]* may be followed in this case.

5. The appellate authority cannot be faulted for not considering 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 payment of collected taxes for a continuous period of three months. In the decision in the case of *Suguna Cutpiece,* 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.

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

i. The impugned order passed by the third respondent dated 25.8.2023 is set aside. Consequentially, the order, if any, passed by the second respondent rejecting the appeal filed by the petitioner against the order dated 25.8.2023 passed by the third respondent, is also set aside.

ii. The petitioner is directed to file returns for the period prior to the cancellation of GST registration, if not already filed, after paying the 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.

iii. 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 (*ITC*), which may be lying un-utilized or unclaimed in the hands of the petitioner.

iv. If any ITC remains un-utilized, it shall not be utilized 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 relevant Act and Rules.

vi. 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.

vii. If any ITC was earned, it shall be allowed to be utilized only after scrutinizing and approving by the concerned respondent or any other competent authority.

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

ix. The concerned 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.

x. The above exercise shall be carried out by the concerned respondent within a period of thirty (30) days from the date of receipt of a copy of this order and

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

There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

24.04.2024

Index : No
Speaking Order : Yes
Neutral Case Citation: No

klt

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