IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.18927 of 2024 &
W.M.P.Nos.20785 & 20786 of 2024

M/s.Arun Cotton Company,
Rep. by its Proprietor Smt.Ramasamy Saradhamani,
(GSTIN:33ALEPS7616RIZE)
269/1, Kovai Main Road,
Annur, Coimbatore,
Tamil Nadu - 641 653. ... Petitioner

Vs.

1.The Additional Commissioner (Appeals),
Office of the Commissioner of
GST & Central Excise (Appeals),
6/7, A.T.D.Street, Race Course Road,
Coimbatore - 641 018.

2.The Superintendent of GST & Central Excise,
Annur Range No.24,
Agraharam Street, Annur,
Coimbatore -641 653.
Coimbatore District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings made in A.No.18/2024-GST-ADC-CBE, dated 29.02.2024 and quash the same.

For Petitioner : Mr.Dhanaram Ramachandran

For Respondents : Mr.K.S.Ramaswamy
Senior Standing Counsel

ORDER

This writ petition has been filed challenging the order dated 29.02.2024 passed by the respondent, dismissing the petitioner's appeal on the ground of limitation, as it was not filed within the prescribed time limit under the provisions of the CGST Act, 2017.

2. The learned counsel for the petitioner contends that due to the COVID-19 pandemic, the petitioner was unable to file monthly GST returns for a continuous period of six months. Consequently, a show cause notice dated 05.01.2022 was issued for the cancellation of registration, directing the petitioner to appear for a personal hearing on 04.02.2022. The petitioner appeared and submitted a reply explaining that the company was at a standstill due to the pandemic. Nevertheless, the second respondent issued an order on 07.04.2022 cancelling the GST registration, citing failure to file returns for a continuous period of six months. As against the said order, the petitioner filed an appeal before the first respondent, which was dismissed by the impugned order dated 29.02.2024 on the ground of limitation. The learned counsel would also submit that the petitioner has already paid all required taxes, late fees, and penalties, and hence the learned counsel prays to set aside the order passed by the first respondent.

3. In reply, the learned Senior Standing Counsel for the respondent confirms that the GST registration of the petitioner was cancelled by the order dated 07.04.2022 and the appeal filed by the petitioner was also rejected on the ground of limitation, as the petitioner did not file the return for a continuous period of six months. Hence, the learned counsel prays to pass an appropriate order.

4. Heard the learned counsel for both parties and perused the materials on record.

5. In this case, the GST registration of the petitioner was cancelled by an order dated 07.04.2022. The petitioner's appeal against this cancellation was also subsequently rejected by the impugned order dated 29.02.2024 due to a delay in filing the appeal. According to the petitioner, due to the COVID-19 pandemic, the company was at a standstill and suffered significant losses, which prevented the filing of returns for a continuous period of six months. The reason provided for non-compliance with the relevant provisions of the Act within the prescribed time, in the considered opinion of this Court, appears to be genuine. However, this Court believes that if the delay is condoned and the matter is remanded to the first respondent for fresh consideration, it will cause further delay in the disposal of the appeal and the

revocation of the petitioner's GST registration, considering the fact that the petitioner had already paid entire tax, interest and late fees as well. Therefore, this Court is inclined to revoke the order passed by the second respondent cancelling the GST registration of the petitioner. The cancellation of registration is hereby revoked, subject to the fulfilment of 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 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.

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

20.08.2024

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

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