IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.07.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17664 of 2024
and W.M.P.No.19445 of 2024

MDR Enterprises,
Represented by its Proprietor Devan Mani,
Door No.617, Perumal Kovil Street,
Pulinthoppu, Nemam,
Tiruvallur District-600 124. ... Petitioner

-vs-

1. The Deputy Commissioner (ST),
O/o. The Deputy Commissioner (ST),
GST Appeal, Chennai-I,
3rd floor, C.T.Annexe Building,
No.1, Greams Road, Chennai-600 006.

2.The Assistant Commissioner,
Thirumazhisai Assessment Circle,
Thirumazhisai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the 2nd respondent order dated 03.05.2023 in Reference Number

ZA3305230100947 and the records of the 1st respondent pertaining to the impugned order dated 03.05.2024 passed in RC.No.1538/2024 and quash the same and consequently direct the respondents to revoke the cancellation of the GST registration of the petitioner's firm.

For Petitioner : Mr.P.Suresh Babu

For Respondents : Mr.T.N.C.Kaushik, AGP (T)

ORDER

The petitioner assails an appellate order rejecting the appeal against cancellation of the petitioner's GST registration and also such order of cancellation. By asserting that the proprietor could not file returns in time on account of ill-health, the present writ petition was filed. A show cause notice dated 30.03.2023 was received asking the petitioner to show cause as to why his GST registration should not be cancelled. The cancellation order was issued thereafter on 03.05.2023. 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. The petitioner would file the necessary GST returns in the event of the GST registration being restored. 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.TNC.Kaushik, learned Additional Government Pleader, accepts notice on behalf of the respondents. He submits that the order issued in *Suguna Cutpiece v. The Appellate Deputy Commissioner (ST) (GST) and others (W.P.Nos.25048, 25877, 12738 of 2021 etc., batch) dated 31.01.2022 (Suguna Cutpiece),* was a conditional order and that the petitioner should be directed to comply with all conditions stipulated therein.

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. 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 following directions:

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.

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

7. W.P.No.17664 of 2024 is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

23.07.2024

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

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To

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