IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19560 of 2024
WMP.No.21411 of 2024

M/s.Metaphor Enterprises, by its Partner,
Magesh Shankar Sampath, Chennai-37 Petitioner

Vs

1. The Deputy Commissioner (ST), GST Appeal
Chennai-I, Chennai 600006

2. The Assistant Commissioner, J.J.Nagar Assessment Circle
Chennai-37 Respondents

Prayer:- This Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order of the 2nd Respondent dated 21.11.2022 in Ref.No. ZA3311220766003 and the records of the 1st Respondent, relating to the order dated 25.04.2023 passed in RC.No.1537 of 2024 and to quash the same and consequently, to 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.G.Nanmaran, Special Government Pleader

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus to

call for the records relating to the order of the 2nd Respondent dated 21.11.2022 in Ref.No.ZA3311220766003 and the records of the 1st Respondent, relating to the order dated 25.04.2023 passed in RC.No.1537 of 2024 and to quash the same and consequently, to direct the Respondents to revoke the cancellation of the GST registration of the Petitioner's Firm.

2. The case of the Petitioner is that the Petitioner Company, which is engaged in the business of Architect, was issued with a show cause notice, dated 09.11.2022 for cancellation of GST registration for not filing of GST returns for a continuous period of six months through the GST Online Portal, wherein the date of personal hearing was fixed as 09.12.2022. However, even before the said date of personal hearing, the impugned order dated 21.11.2022, came to be passed, cancelling the GST registration on the ground that the Petitioner did not send a reply to the show cause notice and also appear for personal hearing. The Petitioner filed an appeal before the 1st Respondent on 02.04.2024 through Online and submitted hard copy of the same on 05.04.2024. The Petitioner could not file the returns due to medical conditions of the Partner of the Petitioner Firm. However, without considering the appeal on merits, the Respondent passed the impugned order dated 25.04.2024, returning the appeal on the ground of limitation. Hence, contending that the impugned order of the 1st Respondent was passed, without affording an opportunity of filing a reply to the show cause notice,

including an opportunity of personal hearing to the Petitioner to establish their case, thereby violating the principles of natural justice and without considering the said aspect, the 1st Respondent also returned the appeal erroneously, this Writ Petition has been filed.

3. This Court heard the learned counsel on either side, considered their submissions and also perused the materials placed on record.

4. The learned counsel for the Petitioner would submit that the impugned show cause notice was issued through the GST Portal and that the original of the same was not served physically on the Petitioner and hence, the Petitioner had no occasion to know about the issuance of the show cause notice and consequently, they could not file a reply, along with relevant documents and also could not appear for personal hearing, but however, even before the date of personal hearing, the impugned order, cancelling GST registration came to be passed by the 1st Respondent, without affording an opportunity of filing a reply to the impugned show cause notice, including a personal hearing to the Petitioner, thereby violating the principles of natural justice. The learned counsel would further submit that the 1st Respondent also without considering the said aspect, erroneously returned the appeal only the ground of limitation. The learned counsel would further submit that due to the medical conditions of the Partner of the Petitioner Firm, GST Returns could not be filed for the relevant period and that the Petitioner would be able to

establish their case, by filing GST Returns as required by the Respondent authority and also paying arrears with penalty and interest towards GST dues if any imposed by the Respondent authority, within a time frame, if an opportunity is provided and hence, the learned counsel prays to set aside the impugned orders.

5. The learned Government Advocate for the Respondents would submit that if the Petitioner is ready to file GST returns for the relevant period along with arrears with interest and penalty towards GST dues, appropriate orders for revocation of the GST registration will be passed by the Respondent authority.

6. On considering the materials available on record and the submissions of the learned counsel on either side, it is seen that admittedly the impugned show cause notice was issued through the GST Portal Tab and the original copy of the same was not served physically on the Petitioner. When the Respondent Authority intends to pass an assessment order, it should be done only after affording an opportunity of filing a reply to the show cause notice, including a personal hearing to the Assessee and thereafter, considering the reply of the Assessee, as provided under law, but in this case, the 1st Respondent Authority failed to do so. Further, the Petitioner herein was not in a position to notice about the issuance of show cause notice, since it was issued through the GST Online Portal and the original of the same was not served

physically to the Petitioner. Consequently, the Petitioner was not able to send a reply and also to appear for personal hearing. It is also to be noted that even before the date of personal hearing, the 1st Respondent passed the impugned order, cancelling the GST registration, which is an utter violation of principles of natural justice. Even the 2nd Respondent did not entertain the appeal merely on the ground of limitation and not on merits.

7. Admittedly, the Petitioner is carrying on the business as on date. Due to non filing of the returns, the GST representation was cancelled. The reason for non filing of the GST Returns for the relevant period assigned by the Petitioner that the Partner of the Petitioner Firm was not well at that point of time, appears to be genuine. Since the Petitioner is running the business as on date, certainly, for the interest of the State, they are bound to file the GST returns, by paying necessary tax and the Government is entitled to get tax from the tax payer for the welfare of the State. A person, who is running business, cannot be allowed to evade tax. In this case, the Petitioner assigned reasons for not filing the GST Return along with tax and now, the Petitioner also undertakes to file the GST Returns for the relevant period, along with arrears of tax with penalty and interest for the relevant period. According to the Petitioner, the Petitioner would be able to establish their case if an opportunity is provided.

8. In view of the above said circumstances and discussions, this Writ Petition is

disposed of, with the following directions:-

(a) The impugned orders are set aside.

(b) The Respondents are directed to revoke the cancellation of the GST registration of the Petitioner Firm within a period of two weeks from the date of receipt of a copy of this order.

(c) On such revocation, the Petitioner is directed to file all GST returns for the relevant period as required by the Respondent Authority and pay all arrears with interest and penalty towards

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GST dues, within a period of six weeks thereafter.

(d) In the event of any failure on the part of the Petitioner in adhering to the above directions, it is open to the Respondent Authority to proceed further, in accordance with law.

No costs. Consequently, the connected MP is closed.

06.08.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
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To

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2. The Assistant Commissioner, J.J.Nagar Assessment Circle
   Chennai-37

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