IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.22183 of 2024
and W.M.P.No.24155 of 2024

The Body Studio,
Represented by its Proprietor, Bharatraj Hari,
T 76 B, 29th Cross Street, Besant Nagar,
Chennai - 600 09. ... Petitioner

Vs.

1. The Additional Commissioner (CT) GST - Appeals-II,
Office of the Commissioner of GST & Central Excise,
Newry Towers 2nd Floor, No.2054/I, II Avenue,
19th Main Road, Anna Nagar, Chennai - 600 040.

2. The Superintendent of GST,
Thiruvanmiyur Circle, Range IV Zone,
Adyar, Chennai - South. ... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the order dated 07.04.2020 passed by the second respondent in Reference No.ZA3304200047824 and the records of the first respondent pertaining to the impugned order dated 24.06.2024 passed in Order-in-Appeal No.177/2024 (GSTA-II) (ADC) 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.Rajnish Pathiyil
Senior Panel Counsel

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ORDER

The present Writ Petition is filed challenging the impugned order dated 24.06.2024, which was passed rejecting an application filed for condonation of delay of 1407 days in filing an appeal.

2. The learned counsel for the petitioner submits that the respondent issued a show cause notice dated 03.02.2020 for cancellation of registration for failure to furnish returns for a continuous period of six months under Section 39 of CGST Act, 2017. By letter dated 13.02.2020, the petitioner has replied to the show cause notice. However, the second respondent, by order dated 07.04.2020, cancelled GST registration for the reasons that the petitioner has not appeared for personal hearing and has also not filed returns for six months.

3. He further submits that the petitioner is doing business by even online and hence, the cancellation of GST heavily affected the petitioner's business. Hence, the appeal has been filed against the order of the cancellation of the GST Registration on 12.06.2024 before the first respondent. However, the same was dismissed merely citing the delay in filing the appeal which cannot be condoned by the appellate authority and refused to entertain the case on merits by order dated 24.06.2024. Since the petitioner's turnover is below Rs.20.00 Lakh, they did not come under the GST Act and they need not to file returns. Under this circumstance, the GST registration of the petitioner was cancelled on 07.04.2020.

4. He further submits that in the month of May, 2024, the petitioner crossed the limit of turn over of Rs.20.00 Lakhs and thereafter only, the question of GST would arise. Therefore, he would intend to file their return and he made an attempt to open the portal to file their return, but, the GST registration of the petitioner was cancelled on 07.04.2020. Therefore, there was a delay of 1407 days. Hence, the appeal has been filed against the order of cancellation of the GST Registration on 12.06.2024 before the first respondent. However, the same was dismissed merely citing the delay in filing the appeal which cannot be condoned by the appellate authority and refused to entertain

the case on merits by order dated 24.06.2024.

5. He further submits that the petitioner is unaware of the consequences of non-payment of the returns and the reason for delay of filing an appeal is only due to the illness of the petitioner and the order was communicated by online, which was not aware of the petitioner, in time. Hence, the impugned order passed by the respondents are liable to be set aside and an opportunity may be given to the petitioner to put forth his case before the authorities concerned.

6. The learned Senior Panel Counsel appearing for the respondents would submit that as per the settled position of law laid down by this Court in batch of cases in ***W.P.No.25048 of 2021, etc., dated 31.01.2022*** in the case of ***"Suguna Cutpiece Centre Vs. the Appellate Joint Commissioner of GST (ST) (GST) and Another"***, the request of the petitioner may be considered by the respondents subject to payment of entire tax dues including penalty along with all other returns, within time bound manner.

7. Heard the learned counsel appearing for the petitioner and the

learned Senior Panel Counsel appearing for the respondents and perused the materials placed before this Court.

8. Considering the fact that in the month of May, 2024, the petitioner crossed the limit of turn over of Rs.20.00 Lakhs and the reason for delay in filing an appeal is only due to the illness of the petitioner and the order was communicated through portal and the petitioner was not aware, this Court is inclined to dispose of the Writ Petition with 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.

With the above directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

13.08.2024

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To

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KRISHNAN RAMASAMY, J.

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