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.22271 of 2024
and W.M.P.No.24262 of 2024

Blue Moon Cool Systems,
Represented by its Proprietor, Augustin Allwin,
No.28, Narayana Maisty Street, Ottery,
Chennai - 600 012. ... Petitioner

Vs.

The Assistant Commissioner,
Ayanavaram Assessment Circle,
Chennai Central Division,
Chennai. ... Respondent

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 records of the respondent dated 28.06.2023 in Reference Number: ZA3306232524002 and quash the same and consequently direct the respondent to revoke the cancellation of the GST registration of the petitioner firm.

For Petitioner : Mr.P.Suresh Babu

For Respondent : Mr.G.Nanmaran
Special Government Pleader (Taxes)

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ORDER

The present Writ Petition is filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent dated 28.06.2023 in Reference Number: ZA3306232524002 and quash the same and consequently direct the respondent to revoke the cancellation of the GST registration of the petitioner firm.

2. The learned counsel for the petitioner submits that the respondent issued a show cause notice dated 14.06.2023 for cancellation of Registration for failure to furnish returns for a continuous period of six months. The petitioner was not able to reply to the show cause notice since he is not aware of the same. Hence, the second respondent by order dated 28.06.2023 cancelled GST Registration for the reasons that the petitioner has not appeared for personal hearing and not filed returns for six months. He further submits that due to health issue, the petitioner was not able to file returns. Hence, the impugned order may be set aside and direct the respondent to revoke the cancellation of the GST registration of the petitioner firm.

3. He also relied on the judgment of this Court 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"***, wherein this Court has specifically directed to consider the appeal on merits irrespective of delay in filing the appeal.

4. The learned Special Government Pleader (T) appearing for the respondents would submit that subject to payment of tax dues including interest and penalty along with all other returns, the request of the petitioner may be considered.

5. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader (T) appearing for the respondent and perused the materials placed before this Court.

6. In the present case, the petitioner has not filed returns for a continuous period of six months, for which, the GST Registration of the petitioner's firm was cancelled. Due to ill-health, the monthly returns have not been filed by the petitioner and without considering this aspect, the respondent has cancelled the GST Registration, which caused great hardship to the

petitioner in filing the returns as well as for payment of tax dues. Therefore, it would cause loss for both the petitioner and the respondent. Hence, this Court is inclined to set aside the impugned order and revoke the cancellation of GST Registration passed by the respondent.

7. In view of the above, restoration of the GST registration is subject to and conditional upon fulfilling 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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KRISHNAN RAMASAMY, J.

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To

The Assistant Commissioner,
Ayanavaram Assessment Circle,
Chennai Central Division,
Chennai.

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