IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.24040 of 2024
& W.M.P.Nos.26302 & 26303 of 2024

M/s.Nitha Enterprises,
Rep by its Partner,
Mr.T.Porchezhian,
No.21/1, Besant Nagar Extn,
Karaikal 609 602.

... Petitioner

Vs.

1.The Commissioner of GST and Central Excise,
Puducherry Commissionerate,
No.1, Goubert Avenue,
Puducherry 605 001.

2.Additional Commissioner (Appeals II),
Office of the Commissioner of GST & Central Excise (Appeals I),
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

3.Superintendent of GST & Central Excise,
Karaikal Division, Puducherry Commissionerate,
Beach Road, Karaikal, Puducherry 609 602.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in Order passed by the 2nd respondent vide impugned order in Appeal No.90/2024 (GSTA-I)(ADC) dated 11.06.2024 and seeking to quash the same as arbitrary issued by the 2nd respondent and further direct the respondents to restore the GST Registration.

For Petitioner	:	Mr.Narasimha Sharathi
For Respondent	:	Mr.B.Ramanakumar, Senior Standing counsel

ORDER

This writ petition has been filed challenging the order dated 03.10.2023 passed by the 2nd respondent cancelling GST registration of the petitioner.

2. Mr.B.Ramanakumar, learned Senior Standing counsel, takes notice on behalf of the respondents. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that the petitioner, who was a service provider, had entrusted his Auditor for filing the returns, however, the Auditor of the petitioner had failed to do so. Thereafter, it was informed by the said Auditor that due to the non-filing of returns, the GST Registration of the petitioner was canceled vide order dated 10.04.2023 with effect from 21.03.2023. In this regard, an appeal was also preferred by the petitioner seeking for revocation of the above order dated 10.04.2023, however the same was rejected by the respondent-department. Hence, this petition has been filed.

4. Further, he would submit that the petitioner is willing to file his GST returns and pay the entire tax liabilities along with applicable interest and penalty, if any. Hence, he requests this Court to revoke the order passed by the respondent for cancellation of GST Registration of the petitioner.

5. In reply, the learned Senior Standing Counsel for the respondent

confirms that the GST registration of the petitioner was cancelled by the order dated 10.04.2023 with effect from 21.03.2023 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.

6. Heard the learned counsel for the petitioner and the learned senior standing counsel for the respondent and also perused the materials available on record.

7. In this case, the GST registration of the petitioner was cancelled by an order dated 10.04.2023 with effect from 21.03.2023. The petitioner's appeal against this cancellation was also subsequently rejected by the impugned order dated 11.06.2024 due to the delay in filing of appeal. According to the petitioner, the petitioner had entrusted his Accountant for filing the returns, however, the Accountant of the petitioner had failed to do so, due to which the GST Registration of the petitioner was cancelled by the respondents. 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.

8. Therefore, this Court is inclined to revoke the order passed by the 2nd respondent canceling the GST registration of the petitioner. The cancellation of registration is hereby revoked, subject to the fulfillment of the following conditions:

> i. 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.
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> ii. 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.

iii. 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.

iv. Only such approved ITC shall be allowed to be utilized thereafter for discharging future tax liability under the Act and Rules.

v. 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.

vi. 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.

vii. The above exercise shall be carried out by the respondent within a period of 4 weeks from the date of restoration of GST Registration of the petitioner.

viii. If any of the aforesaid conditions is not complied with by the petitioner, the benefit granted under this order will automatically ceased to operate.

9. With the above directions, this writ petition is disposed of. No

cost. Consequently, the connected miscellaneous petitions are also closed.

27.08.2024

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

To

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KRISHNAN RAMASAMY.J.,

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