IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.01.2023**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.24883 of 2023
&
WMP Nos.24307 & 24308 of 2023

Sreenidhi Alloy Metal Suppliers
Represented by its Partner
SF No.182, Site Number 68,69,
Cheran nagar, Trichy Main Road,
Kannampalayam,
Coimbatore, Tamil Nadu-641 402. ... Petitioner

vs

1. Superintendent (GST)
Palladam-2.

2. Superintendent (GST)
Coimbatore IV D Range

3. Superintendent (GST)
Coimbatore-ID Range

4. Superintendent (GST)
Arasur Central Range. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records of the 1st Respondent's prder dated 07.08.2023 in

Ref.ZA330823029189F and quash the same and direct the Respondents to withdraw any action taken against Petitioner's customers pursuant to the said order,

For Petitioner : Mr.J.Adithya Reddy

For Respondents: Mr.K.Umesh Rao,
Senior Standing Counsel

ORDER

The petitioner challenges an order dated 10.07.2023 cancelling the GST registration of the petitioner.

2. The petitioner asserts that it is a partnership firm engaged in the business of steel and metal trading and that such business was being run from rented premises. It is further asserted that the lease was surrendered on 01.07.2023 and that a fresh lease for an alternative premises was taken.

3. Learned counsel for the petitioner referred to the show cause notice dated 04.07.2023 and submitted that the petitioner was called

upon to show cause as to why the GST registration should not be cancelled under Section 29(2)(e) of the CGST Act on account of obtaining such registration by fraud, wilful misstatement or suppression of facts. He also pointed out that the show cause notice does not provide any reasons to suspect that the registration was obtained by fraud, wilful misstatement or suppression of facts. He further submits that the petitioner replied to the show cause notice and explained that the business was shut down on account of financial crisis and the consequential inability to pay the rent for the premises shown in the registration. Without considering the reply, he submits that an unreasoned order dated 10.07.2023 cancelling the registration with retrospective effect was issued. He relies on several judgments of other High Courts such as the order dated 10.02.2023 of the Gujarat High Court in *Gigamade Machineries Private Limited v. State of Gujarat*, the order dated 12.12.2023 of the Division Bench of the Bombay High Court in *Ahmed Enterprises Through Proprietor Tausif Ahmed Niazi v. Union of India and* the order dated 05.01.2024 of the Division Bench of the Delhi High Court in *M/s.Radhey Trading Company vs. Principal Commissioner of Goods and Services Tax, North*

North Delhi.

4. In reply to these contentions, learned standing counsel for the respondents submits that an appeal lies against the impugned order under Section 107 of the CGST Act. In addition, learned counsel submits that there were two attachments to the show cause notice, including the physical verification report dated 04.07.2023. Learned counsel submits that the said document records the reasons for issuing the show cause notice, i.e. the fact that the Unit was not existent at the registered address provided by the petitioner for registration. By referring to Section 29(2)(e) of the CGST Act, it was further submitted that the proper officer is empowered to cancel the registration with retrospective effect if such registration was obtained by means of fraud, wilful misstatement or suppression of facts.

5. The show cause notice merely makes reference to Section 29(2)(e) of the CGST Act. Otherwise, the said notice is devoid of any reasons or justifications for calling upon the petitioner to show cause as to why the registration should not be cancelled. Although learned

standing counsel pointed out that the screen shot from the portal shows that there are two attachments, it is not possible to ascertain from the show cause notice as to which documents were attached thereto.

6. Section 29(2)(e) of the CGST Act undoubtedly enables the proper officer to cancel the registration even with retrospective effect. However, it should be borne in mind that such cancellation may be effected under clause (e) only based on material supporting an inference that the registration was obtained by means of fraud, wilful misstatement or suppression of facts. In this case, the registration was obtained in the year 2019 and no material has been placed on record to support the inference that the registration was obtained in early 2019 by means of fraud, wilful misstatement or suppression of facts. Therefore, the impugned order calls for interference.

7. The impugned order is quashed and the matter is remanded to the first respondent. Consequently, the respondents are directed to restore the registration subject to the outcome of re-adjudication. It is open to the first respondent to issue a fresh show cause notice,

provide a reasonable opportunity to the petitioner to respond thereto and thereafter issue orders. It is made clear, however, that this order will not stand in the way of proceedings being taken or continued against the petitioner in respect of non-filing of returns or for recovery of tax dues, if any.

8. This writ petition is disposed of on the above terms without any order as to costs. Consequently, the connected miscellaneous petitions are closed.

29.01.2023

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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To

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   Coimbatore IV D Range

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