IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.24892 of 2024 &
W.M.P.No.27238 of 2024

M/s.C.Venkatesh,
Rep. by its Proprietor Chellatappa Venkatesh,
No.134, Karnoor, Mathigiri (P),
Hosur, Krishnagiri - 635 110. ... Petitioner

Vs.

1.The Deputy Commissioner of State Tax,
(GST-Appeals),
CTD Annex Building,
Salem.

2.The Assistant Commissioner of State Tax
Hosur (Souht-I),
CT Building, Seetharam Nagar,
Bangalore Road, Near Old Bus Stand,
Hosur, Krishnagiri - 635 109. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order bearing Reference No.ZA330323047567L, dated 09.03.2023 passed by the second respondent and quash the same as the same lacks jurisdiction and has been passed in contravention of Section 75(5) & (7) and Section 169 of the GST Acts read with Rule 142 of CGST Rules, 2017 and articles 14, 19 (1)(g) and 265 of the Constitution.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mrs.K.Vasanthamala
Government Advocate (Taxes)

ORDER

The challenge in this writ petition is to the order dated 09.03.2023, passed by the respondent, cancelling the GST registration of the petitioner.

2. The learned counsel for the petitioner submitted that the petitioner was issued a show cause notice through the online GST portal by the second respondent on 15.02.2023, requiring a reply for non-filing of returns for a period of three months and to appear before the second respondent on 17.02.2023 at 11 a.m. He would further submit that since all notices and communications were uploaded on the GST portal, the petitioner, being a small business concern, was not aware of the notices uploaded and was unable to file a reply to the notice or appear before the second respondent. Thereafter, a final order was passed by the second respondent stating that the GST registration number had been cancelled, and since the order was passed without providing a sufficient opportunity for a personal hearing to the petitioner, it is in gross violation of the principles of natural justice. Hence, the learned counsel prays for an appropriate order.

3. On the other hand, the learned Government Advocate (Taxes) appearing for the respondent submitted that the petitioner did not file returns for a continuous period of three months. Consequently, a show cause notice was issued; however, the petitioner neither appeared nor replied to the notice. As a result, the cancellation of registration was issued with effect from 01.01.2023, on 09.03.2023. The learned Government Advocate would further submit that the petitioner has not paid the outstanding taxes and that the revocation of the cancellation of registration will only be considered upon payment of all dues and the filing of all returns.

4. Heard the learned counsel on either side and perused the materials available on record.

5. Admittedly, the GST registration of the petitioner was cancelled due to non-compliance in filing returns, as the communication was uploaded in the additional notices column of the GST portal. Furthermore, the time limit for filing a statutory appeal against the cancellation order had also expired due to a financial crisis in the business activities of the petitioner, and additionally, even the appeal remedy was exhausted. Therefore, this Court is of the view that the reason provided by the petitioner for non-compliance

with the relevant provisions of the Act within the stipulated time appears to be genuine.

6. 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.

7. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

30.08.2024

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

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To

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(GST-Appeals),
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KRISHNAN RAMASAMY.J.,
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