IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.25444 of 2024 &
W.M.P.No.27813 of 2024

M/s.Mohan Medicals,
Rep., by its Proprietrix,
B.Pavithra Devi,
No.13, Mothilal Street,
Tiruvallur, Tiruvallur District. ... Petitioner

Vs.

The Assistant Commissioner,
Tiruvallur Assessment Circle,
The Integrated Commercial Taxes Buildings,
Nazaratpet,
Poonamallee, Tiruvallur District.
... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent in reference No.ZA3304341007217 dated 23.04.2024 and quash the same as illegal and against the principles of natural justice.

For Petitioner : Mr.K.M.Malarmannan

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

ORDER

The challenge in this writ petition is to the order dated 23.04.2024, passed by the respondent, cancelling the GST registration of the petitioner.

2. Mrs.K.Vasanthamala, learned Government Advocate (Taxes), takes notice on behalf of the respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. The learned counsel for the petitioner would submit that, due to ill-health of the petitioner, it was unable to file the returns for a continuous period of six months, consequent to which, the petitioner's GST registration came to be cancelled on 01.11.2023. It is pertinent to note that, the petitioner had filed returns upto July-September 2022-2023, and thereafter, the petitioner could not file the returns as the petitioner's registration was cancelled from 30.09.2022 onwards, but the, order of cancellation of registration has been passed on 01.11.2023. Consequently, the petitioner was unable to file the

monthly returns on the GST portal. Therefore, the petitioner had filed an application for revocation of cancellation of GST Registration on 12.12.2023 before the respondent and the same was rejected on 23.04.2024, on the ground that the petitioner could not reply the show cause notice issued by the respondent. According to the petitioner, the petitioner was not aware of the issuance of the show cause notice through the GST Portal and the original of the said show cause notice was not furnished to them and, therefore, the petitioner had failed to respond the said show cause notice, which led to the passing of the present impugned order. Hence, the petitioner filed the present Writ Petition seeking to set aside the order of rejection of the application filed for revocation of cancellation of GST registration passed by the respondent.

5. 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 six months, which led to the cancellation of the GST registration of the petitioner. He would further submit that the petitioner has not paid the outstanding taxes and that

revocation of the cancellation of GST registration will be considered only upon payment of all dues and also filing of all returns.

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

7. Admittedly, the GST registration of the petitioner was cancelled due to non-compliance in filing returns. According to the petitioner, due to her ill-health, returns were not filed. The petitioner claims that they were unaware of the notices and communications sent through the GST Portal. 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.

8. In view of the above, restoration of the GST registration is subject to 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 from the date when the petitioner stopped filing the returns and 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 by 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 Assessing 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 cease to operate.

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

04.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
The Assistant Commissioner,
Tiruvallur Assessment Circle,
The Integrated Commercial Taxes Buildings,
Nazaratpet,
Poonamallee, Tiruvallur District.

KRISHNAN RAMASAMY.J.,

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