IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.09.2024**

CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

WP No.27402 of 2024 &
WMP.No.29906 of 2024

M/s.Thaai Engineering,
represented by its Partner,
S. Tamil Mani ... Petitioner

vs

1. The Additional Commissioner,
   Chennai Outer Commissionerate,
   2054, Block 1, II Avenue,
   12th Main Road, Anna Nagar,
   Chennai 40.
2. The Superintendent,
   Poonamallee II Range,
   42, Trunk Road,
   Poonamallee ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the impugned order passed byt the 1st respondent in reference No.ZA330524270586E, dated 31.05.2024 and quash the same as illegal and against the principles of natural justice.

For Petitioner	:	Mr. K.M. Malarmannan
For Respondents	:	Mr. B. Ramanakumar Senior Panel Counsel

ORDER

This writ petition has been filed for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order passed byt the 1st respondent in reference No.ZA330524270586E, dated 31.05.2024 and quash the same

2.The respondent, by the order impugned has rejected the condone delay application filed for revocation of cancelation of Registration.

3. The petitioner is doing business as a retail trader in Engineering Goods. On 12.07.2023, the 2nd respondent passed the order of cancellation of Registration against the petitioner's firm, hence the petitioner filed an application for revocation of cancellation order before the 2nd respondent on 27.02.2024 and the same was forwarded to the 1st respondent along with a petition for condoning the delay in filing the application, since the application was filed after the prescribed time limit.

4.On 17.05.2024, the 1st respondent issued a show cause notice calling for the reason for delay in filing the application, but the same was not noticed by the petitioner. The petitioner could not file reply to the show cause notice. On 31.5.2024, by the order impugned, the 1st respondent rejected the condone delay application without any notice of hearing holding that the reasons placed on record for the delay in filing revocation application for cancelation of registration is not satisfactory and no reply is filed and not attended the personal hearing.

5. It is the case of the petitioner that the order of cancellation of Registration was passed on 12.07.2023 on the ground that petitioner has failed to file returns continuously for a period of six months. On account of petitioner's illness and financial constraints, he failed to file returns. Under the circumstances, show cause notice issued in portal on 12.04.2023 has not been viewed by the petitioner and hence, the petitioner did not know about the suspension of his registration w.e.f.12.04.2023 and only on 12.07.2023, he came to know about such cancellation. Thereafter, he preferred application for revocation of cancellation of registration with a delay of 90 days, however the 1st respondent issued show cause notice on common portal on 17.05.2024 calling for the reason for the delay in filing the application and thereafter on 31.05.2024, he rejected the application on the ground that the petitioner did not file reply to the show cause notice issued by the 1st

respondent.

6. Learned counsel for the petitioner submitted that the order of rejection has been passed on petitioner's application for revocation of cancellation was mechanically passed by the 1st respondent on the ground that reply has not been filed for the show cause notice issued on 17.05.2024. Infact, the said show cause notice has not been sent to petitioner's email ID or by post or any other physical mode of service, but it was posted in common portal on 17.05.2024.

7. He further submitted that he has filed the returns on 17.05.2023 by paying taxes, interest and penalty thereof. Thereafter, as the petitioner's registration has been cancelled with effect from 12.04.2023, he could not file returns and now the petitioner is ready to pay all taxes, interest and penalty till date.

8. Learned Senior Panel Counsel appearing for the respondents would fairly submit that since the petitioner made submissions that he has filed all the returns up to the date of cancellation and hereafter ready to file all the returns along with all the tax dues, interest and penalty, the

said submission may be recorded and necessary orders may be passed accordingly.

9. Heard the learned counsel appearing for the petitioner and the learned Senior Panel Counsel appearing for the respondents.

10. Admittedly, in the present case, the petitioner is doing business as retail trader in Engineering goods. Due to certain reasons stated by him, he was not able to file the returns. The case of the petitioner is that he is not claiming Input Tax Credit by producing fake invoices etc., but due to his ill health and financial constraints as stated by the petitioner, he was not able to file his Returns, which leads to cancellation of his Registration. It was submitted by the petitioner that he has filed the Returns upto the date of cancellation. Now the petitioner/ assessee is expressing his intention to carry on the business and is ready to file his Returns. It is also relevant to note that the Registration of the petitioner's firm was cancelled by the respondent. without affording any opportunity of personal hearing. Therefore, he made a request for revocation of the cancellation of Registration, but the same was rejected by citing the reason that reply has not been filed for the show cause notice

dated 17.05.2024. When a person is approaching for revocation of the cancellation of Registration, the authority is supposed to consider the aspect of the petitioner's intentions of carrying on the business and file their returns along with interest and penalty in order to protect the Revenue to the Exchequers, but the action of rejection of application for revocation of cancellation for the assessees, will always cause loss to the Revenue.

11. In the present case, the petitioner is ready and willing to pay the tax dues and penalty and interest thereof. When such being the case, this Court is of the view that the authorities concerned ought to have consider the request of the petitioner/assessee facilitating them to carry on their business activities, then only Revenue could be generated. If there is a continuous business activity, there would be a generation of Revenue and the petitioner could be able to pay the taxes. If there is any business activity, Revenue can be generated, out of which, the petitioner is able to pay the taxes. In the present case, it appears that due to the rejection of the application for revocation of cancellation by the 1st respondent, the business activities would be curtailed, which would cause revenue loss to the Exchequers. Therefore, in the future cases,

whenever application for revocation of cancellation of registration is given for consideration before the authorities concerned, they have to consider wherever the petitioner is intending to carry on the business genuinely as the case may be. In some cases, there are fake invoices also. Therefore, the authorities concerned have to decide the issue appropriately on the applications for revocation of the cancelation of Registration, after affording opportunity of personal hearing to the opposite party. In such a view of the matter, this court is inclined to set side the impugned order dated 31.05.2024 rejecting the condone delay application for revocation of cancellation of Registration. While setting aside the impugned order, this Court passes the following order.

i) the petitioner is directed to file the return from the date of cancelation till this date along with all taxes due, interest and penalty within a period of two months from the date when the portal was open.

i)The respondents are directed to open the portal immediately, so as to facilitate the petitioner to upload all the returns without any further hindrance for his business activities.

12. With the above direction, this Writ Petition is disposed of . No costs. Consequently, the connected miscellaneous petition is closed.

23.09.2024

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
msr

To

1. The Additional Commissioner,
   Chennai Outer Commissionerate,
   2054, Block 1, II Avenue,
   12th Main Road, Anna Nagar,
   Chennai 40.
2. The Superintendent,
   Poonamallee II Range,
   42, Trunk Road,
   Poonamallee

KRISHNAN RAMASAMY, J.

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