IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29050 of 2024 &
W.M.P.No.31688 of 2024

Chinnusamy Suresh,
Proprietor of Sri Amman Agencies,
6/147-5, K.S.S Complex,
Pudhansanthai, Udupam Road, Namakkal,
Namakkal-637 019. ... Petitioner

Vs.

The Superintendent,
Namakkal (Rural),
Namakkal. ... Respondent

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 of the respondent in Ref No.ZA331123071731Z and quash the proceedings dated 16.11.2023 passed therein and further direct the respondent to restore the Petitioner's GST Registration No. 33FREPS1407M1ZM granted under the TNGST / CGST Act, 2017 or pass such further or other orders as it may deem fit and proper in the facts and circumstances of this case and render justice.

For Petitioner : Ms.Siri Chandana.K

For Respondent : Mr.R.P.Pragadish
Senior Standing Counsel

ORDER

The challenge in this writ petition is to the order dated 16.11.2023, passed by the respondent, cancelling the GST registration of the petitioner.

2. Mr.R.P.Pragadish, learned Senior Standing Counsel, 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 and also coupled with certain family disputes, 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 11.10.2023. It is pertinent to note that, the petitioner had filed returns upto February 2023, and thereafter, the petitioner could not file the monthly returns i.e., from March 2023. Therefore, the respondent issued a show cause notice dated 11.10.2023, proposing to cancel the GST registration of the petitioner for the

failure of non-filing of the monthly returns for a continuous period of six months and also directed the petitioner to file a reply within a period of 30 days from the date of issuance of said show cause and fixed personal hearing on 08.11.2023. Without any reply and personal hearing opportunity to the petitioner, the respondent proceeded to pass an impugned order dated 16.11.2023, cancelling the GST registration of the petitioner with effect from 11.10.2023.

4.1. The main contention of the learned counsel for the petitioner is that, the petitioner was not aware of the issuance of the show cause notice issued 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. Further, he would submit that the time limit for filing an application for revocation of the cancellation and the time limit for filing a statutory appeal against the cancellation order has been expired. Hence, he submitted that without any other option, the petitioner has filed the present Writ Petition for revocation of cancellation of GST registration passed by the respondent.

5. On the other hand, Mr.R.P.Pragadish, learned Senior Standing Counsel 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 monthly returns. According to the petitioner, due to his ill-health and certain family disputes, the monthly returns were not filed. The petitioner claims that they were unaware of the notices and communications sent through the GST common 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.

03.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
The Superintendent,
Namakkal (Rural),
Namakkal.

KRISHNAN RAMASAMY.J.,
jd

W.P.No.29050 of 2024

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