IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.30550 of 2024
and
W.M.P.No.33164 of 2024

AMBIENCE RESTAURANT,
Represented by its Proprietor, RAMAKRISHNAN KALAIVANI,
Plot Survey no.405/5A, Jamunampattu Village,
Sriperumbudur Taluk, Oragadam,
Kanchipuram-602105. ...Petitioner

Vs.

1. The Additional Commissioner (CT) GST-Appeals-II,
Office of the Commissioner of GST & Central Excise,
Newry Towers 2nd Floor, No.2054/I, II Avenue,
19th Main Road, Anna Nagar, Chennai- 600 040.

2. The Superintendent of GST,
Oragadam Circle, Range Vallam,
Sriperumbudur Division,
Chennai Outer Commissionerate. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent order dated 01.08.2023 in Reference Number:ZA330823001742X and the records of the 1st respondent pertaining to the impugned order dated 28.08.2024 passed in Order-in-Appeal No.230/2024

(GSTA-II)(ADC) and quash the same and consequently direct the respondents to revoke the cancellation of the GST registration of the Petitioner's firm.

For Petitioner	:	Mr.P.Suresh Babu
For Respondents	:	Mr.G.Nanmaran Special Government Pleader (Taxes)

ORDER

This Writ Petition has been filed to call for the records of the 2nd respondent order dated 01.08.2023 in Reference Number:ZA330823001742X and the records of the 1st respondent pertaining to the impugned order dated 28.08.2024 passed in Order-in-Appeal No.230/2024 (GSTA-II)(ADC) and quash the same and consequently direct the respondents to revoke the cancellation of the GST registration of the Petitioner's firm.

2. Mr.G.Nanmaran, learned Special Government Pleader (Taxes) takes notice on behalf of the Respondents.

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 submitted that, due to the ill health of the proprietor of the Petitioner's Firm and due to financial constraints, the Petitioner was unable to file the monthly returns for a period of six months. Consequently, the 2nd Respondent issued a show cause notice, proposing the cancellation of the GST registration for non-filing of returns for a continuous period of six months, and suspended the registration with effect from 06.06.2023, by passing an order of cancellation on 01.08.2023. The learned counsel for the Petitioner further submits that all notices/communications were uploaded in GST portal. However, the Petitioner, was not aware of the notices uploaded on the GST portal. After coming to know of the cancellation order, the Petitioner preferred an Appeal before the 1st Respondent with the delay of 157 days, which was rejected by the 1st Respondent vide order dated 28.08.2024, on the ground of delay. Challenging the said order along with impugned cancellation order, this Writ Petition has been filed.

5. Further, he would submit that opportunity of personal hearing was not afforded to the Petitioner before passing the cancellation order and that apart the 1st Respondent also failed to consider the fact that since the Petitioner was

aware of the notices and impugned order which were uploaded in the GST Portal, she could not file the Appeal in time. He further submitted that the Petitioner is now ready to file pending tax/penalty/fine for the remaining period.

6. On the other hand, the learned Senior Standing Counsel (Taxes) appearing for the Respondents submitted that the Petitioner did not file returns for a continuous period of six months, which led to the passing of the impugned cancellation order and since the Petitioner filed the Appeal with a delay of 157 days, the same was rejected. He further submitted that the Petitioner has not paid the outstanding taxes and that revocation of the cancellation of registration will be considered only upon payment of all dues and filing of all returns.

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

8. Admittedly, the GST registration of the Petitioner was cancelled due to non-compliance in filing returns. Since the Proprietor of the Petitioner was ill, they could not file the returns. Furthermore, the Appeal filed by the Petitioner was also rejected. 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.

9. In view of the above, the orders impugned herein are set aside and the restoration of the GST registration is subject to and conditional upon fulfilling the following conditions :

(i) The Respondents 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 scrutinizing 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.

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

17.10.2024

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

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Krishnan Ramasamy,J.,

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