IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.30540 of 2024
and
W.M.P.Nos.33151 and 33153 of 2024

M.Vignesh
Proprietor of Dakshina Ventures
No.25, Flat S1, Rajeshwari Homes
Elango Adigal Street, Choolaimedu
Chennai- 600 094. ...Petitioner

Vs.

The Commercial Tax Officer
MMDA Colony Assessment Circle
No.88, II Floor, Mayor Ramanathan Salai,
Chetpet, Chennai- 600 031. ... 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 on the file of the Respondent in impugned order in Reference No.ZA3308230982692 Form GST REG-19 dated 22.08.2023 and quash the same as illegal and violative of principles of natural justice and direct the Respondent to revoke the cancellation of hte Petitioner's GSTIN Registration No.GSTIN/UIN-33ALNPV7755P1ZY.

For Petitioner : Mr.R.Ananth
for Mr.R.Shenbagaraman

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

ORDER

The challenge in this writ petition is to the order dated 22.08.2023 passed by the Respondent, cancelling the GST registration of the Petitioner and direct the Respondent to revoke the cancellation of the Petitioner's GST registration.

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 submitted that the Petitioner is the Government Sub-contractor doing painting works in State high ways as well as National High ways roads and they were filing the GST returns periodically. While so, due to delay in receipt of payments from Government

Department between August 2022 and November 2022, the Petitioner has filed to file his GST returns in time. Consequently, the Respondent issued a notice on 05.07.2023, 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 31.12.2022, by passing an order of cancellation on 22.08.2023. After the cancellation of GST registration, the Petitioner filed GST returns upto the date of cancellation and also paid taxes with late fee and interest and thereafter filed an application on 08.11.2023 for revocation of cancellation of GST and thereafter the Respondent issued Show Cause Notice for rejection of application for revocation of cancellation or registration.

5. Further, he would submit that all notices/communications were uploaded in GST portal. However, the Petitioner, being a small business concern, was not aware of the notices uploaded on the GST portal. Hence, the learned counsel prays for an appropriate order.

6. 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 passing of the impugned order.

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 due to delay in receipt of payments from the Government Department. Furthermore, the time limit for filing a statutory appeal against the cancellation order had also expired, and 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, 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 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

The Commercial Tax Officer
MMDA Colony Assessment Circle
No.88, II Floor, Mayor Ramanathan Salai,
Chetpet, Chennai- 600 031.

Krishnan Ramasamy,J.,

arr

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