IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.30517 of 2024
and
W.M.P.No.33134 of 2024

Goben Herbal Marketing,
Represented by its Proprietor,
Ram Ragunath Tever,
1st Floor, No.125,
Lakshmi Nagar 1st Street,
Mettu Kuppam Road,
Alwarthirunagar, Virugambakkam,
Chennai- 600 087. ...Petitioner

Vs.

1. The Additional Commissioner (Appeals-II),
   Office of the Commissioner of GST
   & Central Excise (Appeals-II),
   Newry Towers, 2nd Floor, No.2054/I, II Avenue,
   12th Main Road, Anna Nagar,
   Chennai- 600 040.

2. The Superintendent of GST,
   Porur Range-I,
   Kanchipuram- 600 116. ... Respondents

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 1st respondent Order-In-Appeal No.246/2024(GSTA-II)(ADC) dated 02.09.2024 and records of the 2nd respondent pertaining to the impugned order in reference No.ZA3304230266204 dated 08.04.2023 and quash the same and consequently direct the respondents to restore Petitioner's GST Registration No.33AIPPT1609RZJ.

For Petitioner : Mr.S.Anbazhagan

For Respondent : Mr.Rajendran Raghavan, Senior Standing Counsel

ORDER

The challenge in this writ petition is to the order of the 1st Respondent dated 02.09.2024 and the 2nd Respondent dated 03.04.2023 and to quash the same and consequently direct the respondents to restore the Petitioner's GST registration .

2. Mr.Rajendran Raghavan, learned Senior Standing Counsel 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, the business was not carried out after February 2022 to 30.06.2024. As a result, the Petitioner was unable to file

the monthly returns for a continuous period of six months. Consequently, the 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 28.02.2023, by passing an order of cancellation on 08.04.2023. The learned counsel for the Petitioner further submits 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. After coming to know of the cancellation order, the Petitioner preferred an Appeal before the 1st Respondent with the delay of 349 days, which was rejected by the 1st Respondent vide order dated 02.09.2024, 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 him before passing the cancellation order and that apart the 1st Respondent had rejected the Appeal by not considering the fact that the Petitioner had filed the GST returns till February 2022 and 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 349 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, he could not carry on the business after February 2022 till 30.06.2024 and hence 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.

8. 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.

9. 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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Krishnan Ramasamy,J.,

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To

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