IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.32591 of 2024 and
W.M.P.No.32426 of 2024

M/s.Sivashankar & Co
Rep. by its Proprietor
D.Sivashankar, having office at
303, EBONY Apartment,
110/2, River View Link Road,
IAS/IPS Colony, Manapakkam,
Chennai-600125. ...Petitioner

Vs.

Government of Tamilnadu,
Department of Commercial Taxes,
By its Assistant Commissioner (ST),
Nandambakkam Assessement Circle,
Chennai-600069. ... 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 Respondent in Reference No.ZA331223076096Q dated 19.12.2023 and quash the same and further direct the Respondent to revoke the cancellation and restore Petitioner's Registration under the GST Act bearing GSTIN/UIN:33ALJPS8300F1Z7.

For Petitioner : Mr.J.Srinivasa Mohan

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader (Tax)

ORDER

The challenge in this writ petition is to the order dated 19.12.2023 passed by the respondent, cancelling the GST registration of the petitioner and for a direction to the Respondent to revoke the cancellation and restore Petitioner's Registration under the GST Act bearing GSTIN/UIN:33ALJPS8300F1Z7.

2. Mr.C.Harsha Raj, learned Additional Government Pleader (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 Proprietorship concern, engaged in undertaking civil engineer contract works from Southern Railway Chennai Division. He further submitted that the Petitioner faced huge financial crisis during 2023-2024 due to termination of

two contracts, which resulted in arbitration. He further submitted that an arbitral award came to be passed in favour of the Petitioner on 25.04.2023, but the award amount was not released by Southern Railway resulting in heavy loss in the Petitioner's business since 2023. As a result, the petitioner was unable to pay the GST and file the monthly returns for continuous period of six months. Consequently, the respondent issued a notice on 13.11.2023, proposing the cancellation of the GST registration for non-payment of GST and non-filing of returns, and suspended the registration with effect from 19.12.2023, by passing an order of cancellation on 19.12.2023. The learned counsel for the petitioner further submits that due to financial crisis and due to non release of award amount by the Southern Railways since 2023,the Petitioner could not collect funds to pay the GST within the specified time limit. Hence, the learned counsel prays for an appropriate order.

5. On the other hand, the learned Additional Government Pleader (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. 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.

6. In reply, the learned counsel for the Petitioner submitted that the Petitioner undertakes to pay the GST dues and file the GST returns and prays for revocation of the GST.

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. It is stated that due to the financial crisis of the Petitioner Firm and also due to the non-release of award amount by the southern railways, the Petitioner could not pay the GST and file returns. Furthermore, the time limit for filing a statutory appeal against the cancellation order had also expired. 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.

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

30.10.2024

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

The Department of Commercial Taxes,
By its Assistant Commissioner (ST),
Nandambakkam Assessement Circle,
Chennai-600069.

Krishnan Ramasamy,J.,

arr

W.P.No.32591 of 2024

30.10.2024