IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.34656 of 2023
and
W.M.P.No.34608 of 2023

M/s.Shri Sairam Arts,
Rep by its Proprietor,
Mangai Govinda Ramaraj Nambbi,
No.1/2, A4, Seenivasa Arcade,
Arunachalam Road,
Saligramam, Chennai 600093.

... Petitioner

Vs.

1.The Appellate Authority/
The Additional Commissioner of GST (Appeals II),
O/o. 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 & Central Excise,
Saligramam, Zone-V, Range-I,
Vadapalani Division/Range,
Chennai-South Commissionerate.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the 2nd respondent order dated 03.11.2020 in Ref.No.ZA331120006417A and the records of the 1st respondent pertaining to the impugned order dated 12.10.2023 passed in Order-in-Appeal No.218/2023 (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.K.Mohamed Hussen, for Mr.P.Suresh Babu
For Respondent	:	Mr.A.P.Srinivas, Senior Standing counsel

ORDER

This writ petition has been filed challenging the order dated 12.10.2023 passed by the 1st respondent confirming the order dated 03.11.2020 passed by the 2nd respondent.

2. The learned counsel for the petitioner would submit that due to the ill-health of the petitioner, he was unable to run his business and hence, he had not filed the GST returns for a period of 6 months. Under these circumstances, the GST Registration of the petitioner was cancelled by the 2nd respondent vide order dated 03.11.2020 and the same was confirmed vide impugned order dated 12.10.2023 passed by the 1st respondent.

3. Further, he would submit that the petitioner is willing to file his GST returns and pay the entire tax liabilities along with applicable interest and penalty, if any. Hence, he requests this Court to revoke the order passed by the respondent for cancellation of GST Registration of the petitioner.

4. In reply, the learned counsel, representing the learned Senior Standing counsel for the respondents, seeks further time for filing counter.

5. Heard the learned counsel for the petitioner and the learned

representing counsel for the respondents and also perused the materials available on record.

6. Upon perusal of records, it appears that in spite of the several adjournments granted by this Court, no counter has been filed by the respondents. Even today, the learned representing counsel seeks further time to file their counter. However, this Court is not inclined to grant any further time for filing counter since in these types of cases, usually this Court will revoke the order of cancellation of GST Registration subject to certain conditions, so as to enable the petitioner to carry on their business legally.

7. In the present case, the GST Registration of the petitioner was cancelled by an order dated 03.11.2020. The petitioner's appeal against this cancellation was also subsequently rejected by the impugned order dated 12.10.2023 due to a delay in filing the appeal. According to the petitioner, due to his ill-health, the company was at a standstill and suffered significant losses, which prevented the filing of returns for a continuous period of six months. The reason provided for non-

compliance with the relevant provisions of the Act within the prescribed time, in the considered opinion of this Court, appears to be genuine. However, this Court believes that if the delay is condoned and the matter is remanded to the 1st respondent for fresh consideration, it will cause further delay in the disposal of the appeal and the revocation of the petitioner's GST registration.

8. Further, this Court feels that the petitioner might continue their business illegally, if the GST Registration of the petitioner is delayed or denied, in which case, the Revenue of the Department would get affected ultimately. Therefore, since the petitioner came forward by realizing the importance of GST Registration and also undertook to comply with all the conditions imposed by this Court, this Court is inclined to appreciate the efforts taken by the petitioner.

9. For all the above reasons, this Court is inclined to revoke the order passed by the respondents dated 03.11.2020 and 12.10.2023 for cancelling the GST Registration of the petitioner. Accordingly, the cancellation of Registration stands revoked subject to the fulfilment of

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 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 ceased to operate.

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

23.08.2024

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

KRISHNAN RAMASAMY.J.,

nsa

To

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(1/3)