



W.P.(MD)No.2606 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.2606 of 2024

and

W.M.P.(MD)Nos.2626 and 2628 of 2024

M/s.PV Paddy Harvester,
Rep. by its Partner,
P.Anandi,
W/o.Pitchaikann Sivanandhan,
No.20, East Street, Mullakadu,
Thoothukudi – 628 005.

... Petitioner

versus

1. Additional Commissioner Appeals,
Office of the Commissioner of GST
and Central Excise (Appeals),
Coimbatore Circuit Office @ Madurai,
No.4, Lal Bahadur Sastri Marg,
CR Building,
B.B.Kulam, Madurai.

2. Superintendent of GST and Central Excise,
Tuticorin North Range,
Tuticorin Division.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the orders passed by the 1st respondent in A.No. 227/2023-GST-ADC-MDU DIN:20240159KV000000CCFO dated 10.01.2024 and quash the same and consequently, direct the 2nd respondent to restore the registration of the petitioner in GSTIN 33AAZFP4667MIZ9 within the time frame as fixed by this court.

For Petitioner : M/s.W.Pamelin

For Respondents : Mr.N.Dilipkumar,
Standing Counsel

ORDER

This writ petition has been filed as against the order dated 10.01.2024 passed by the 1st respondent.

2. The learned Counsel for the petitioner submits that the petitioner and her husband had started a Firm in the name and style of “Paddy Harvester” and engaged in transportation of agricultural products. They themselves registered under GST Act 2017 in GSTIN



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33AAZFP4667M1Z9. The petitioner has filed their GST returns through their Auditor. While so, the second respondent, by order dated 06.03.2023, cancelled their GST Registration. Challenging the same, the petitioner has filed an appeal before the first respondent and the same was rejected by the first respondent, by order dated 10.01.2024 on the ground of limitation. As against the same, the petitioner has filed this writ petition.

3. The learned Counsel for the petitioner submits that the petitioner was filing their returns through their Accountant regularly and due to ill-health, he did not file the returns in time. The petitioner came to know about the cancellation of GST Registration only through the Supplier and after knowing the same, she filed their returns as on date without any dues. The learned counsel further submits that after issuing the show cause notice, no notice was received by the petitioner for enquiry. Since the GSTN number is mandatory for running their business and in view of the cancellation of their registration, their



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livelihood is affected.

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4. The learned Standing Counsel for respondents submits that the petitioner has been provided with sufficient opportunities before cancellation of his registration under the GSTN Act. A show cause notice was issued to the petitioner and sufficient time was given to offer her explanation. Since the petitioner failed to respond to the show cause notice, the order of cancellation of GST registration came to be passed under the GST Act on 06.03.2023. He further submits that as against the order of cancellation of GST Registration, the petitioner has filed appeal before the first respondent dated 05.07.2023 with a delay of one month. Therefore, the first respondent, by order dated 10.01.2024, has dismissed the appeal on the ground of limitation. Therefore there is no reason to interfere with the impugned order.

5. This Court considered the rival submissions made and perused the materials placed on record.



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6. The petitioner is doing the business of transportation of agricultural products and enrolled under GST Act 2017. The petitioner has been provided with GSTN Registration No.33AAZFP4667M1Z9. The petitioner claims that though she had handed over the documents to her accountant, due to ill-health, he could not file the returns in time. Therefore, the second respondent, by order dated 06.03.2023, cancelled the petitioner's GST Registration. As against the same, the petitioner has filed appeal before the first respondent with a delay of one month and the same was dismissed on the ground of limitation by order dated 10.01.2024. According to the petitioner, she came to know about the order of cancellation only through the supplier.

7. This Court in ***Suguna Cutpiece Vs Appellate Deputy Commissioner (ST)(GST)*** and others reported in ***2022 (2) TMI 933*** wherein it was held that no useful purpose would be served keeping the petitioners out of the Goods and Service Tax regime as such the



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assessee would still continue to his businesses and supply goods and services and the relevant paragraphs are extracted as under:

“216. Since, no useful will be served by not allowing persons like the petitioners to revive their registration and integrate them back into the main stream, I am of the view that the impugned orders are liable to be quashed and with few safeguards.

217. There are adequate safeguards under the GST enactments which can also be pressed against these petitioners even if their registration are revived so that, there is no abuse by these petitioners and there is enough deterrence against default in either paying tax or in complying with the procedures of filing returns.

218. Further, the Government requires tax to meet its expenditure. By not bringing these petitioners within the GST fold, unintended privilege may be conferred on these petitioners unfairly to not to pay GST should they end supplying goods and/or services without registration. For example, a person renting out an immoveable property will continue to batch supply such service irrespective of registration or not.



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219. *Therefore, if such a person is not allowed to revive the registration, the GST will not be paid, unless of course, the recipient is liable to pay tax on reverse charge basis. Otherwise, also there will be no payment of value added tax. The ultimate goal under the GST regime will stand defeated. Therefore, these petitioners deserve a right to come back into the GST fold and carry on their trade and business in a legitimate manner.*

220. *The provisions of the GST Enactments and the Rules made there under read with various clarifications issued by the Central Government pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear, intention is to only facilitate and not to debar and de-recognised assesses from coming back into the GST fold.*

221. *While exercising jurisdiction, under [Article 226](#) of the Constitution, the powers of the Court to do justice i.e., what is good for the society, can neither be restricted nor curtailed. This power under [Article 226](#) can be exercised to effectuate the rule of law.*

222. *Therefore, power of this Court under [Article 226](#) of the Constitution of India is being exercised*



cautiously in favour of the petitioners as this power is conceived to serve the ends of law and not to transgress them.

223. In Mafatlal Industries Ltd. Vs. Union of India, (1997) 5 SCC 536, in Paragraph No.77, the Hon'ble Supreme Court observed that "So far as the jurisdiction of the High Court under [Article 226](#) — or for that matter, the jurisdiction of this Court under [Article 32](#) — is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under [Article 226/Article 32](#), the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it.

224. Notwithstanding the fact that the petitioners have shown utter disregard to the provisions of the Acts and have failed to take advantage of the amnesty scheme given to revive their registration, this Court is inclined to



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quash the impugned orders with grant consequential reliefs subject to terms.

225. The provisions of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of the defect in the scheme of the GST enactments. The right to carry on trade or profession also cannot be curtailed. Only reasonable restriction can be imposed. To deny such rights would militate against their rights under [Article 14](#), read with [Article 19 \(1\)\(g\)](#) and [Article 21](#) of the Constitution of India.

226. As original or as appellate authority exercising power under the respective enactments, quasi judicial officers were bound by the provisions of the Act and the limitation under it, they have acted in accordance with law. They cannot look beyond the limitations prescribed under provisions of the Act. Therefore, no fault can be attributed to their action.

227. This is a fit case for exercising the power under [Article 226](#) of the Constitution of India in favour of the petitioners by quashing the impugned orders and



to grant consequential relief to the petitioners. By doing so, the Court is effectuating the object under the GST enactment of levying and collecting just tax from every assessee who either supplies goods or service. Legitimate Trade and Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance. Therefore, the impugned orders deserve to be quashed.

228. These petitioners deserve a chance and therefore should be allowed to revive their registration so that they can proceed to regularize the defaults. The authorities acting under the Act may impose penalty with the gravity of lapses committed by these petitioners by issuing notice. If required, the Central Government and the State Government may also suitably amend the Rules to levy penalty so that it acts as a deterrent on others from adopting casual approach.

229. In the light of the above discussion, these Writ Petitions are allowed subject to the following conditions:-

i. The petitioners are directed to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with



tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of forty five (45) days from the date of receipt of a copy of this order, if it has not been already paid.

ii. It is made clear that such payment of Tax, Interest, fine / fee and etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.

iii. If any Input Tax Credit has remained utilized, it shall not be utilised until it is scrutinized and approved by an appropriate or a competent officer of the Department.

iv. Only such approved Input Tax Credit shall be allowed for being utilized thereafter for discharging future tax liability under the Act and Rule.

v. The petitioners shall also pay GST and file the returns for the period subsequent to the cancellation of the registration by declaring the correct value of supplies and payment of GST shall also be in cash.



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vi. *If any Input Tax Credit was earned, it shall be allowed to be utilised only after scrutinising and approving by the respondents or any other competent authority.*

vii. *The respondents may also impose such restrictions / limitation on petitioners as may be warranted to ensure that there is no undue passing of Input Tax Credit pending such exercise and to ensure that there is no violation or an attempt to do bill trading by taking advantage of this order.*

viii. *On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.*

ix. *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 these petitioners to file their returns and to pay the tax/penalty/fine.*

x. *The above exercise shall be carried out by the respondents within a period of thirty (30) days from the date of receipt of a copy of this order.*

xi. *No cost.*

xii. *Consequently, connected Miscellaneous Petitions are closed.”*



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WEB COPY 8. The petitioner in this case is doing the business of transportation of agricultural products. Most of the small scale entrepreneurs like carpenters, electricians, fabricators etc. are almost uneducated and they are not accustomed with handling of e-mails and other advance technologies. Though they are providing e-mail IDs at the time of Registration, the applications are prepared by some agents by creating an e-mail IDs, however, on reality most of the Traders are not accustomed with handling of e-mails. They are also not aware about the consequences of not paying the Returns in Time. The department shall workout the possibilities of issuing these notices in the respective regional languages and also by SMS and registered post. So that, the uneducated traders can also respond to these notices to some extent, otherwise, these notices will be an empty formality and will not serve any purpose for which it has been issued.



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9. The object of any Government is to promote the trade and not to curtail the same. The cancellation of registration certainly amounts to a capital punishment to the traders, like the petitioner.

10. In similar circumstances, this Court, in *Suguna Cutpiece Vs. Appellate Deputy Commissioner (ST) (GST) and others* reported in **2022(2) TMI 933**, allowed the writ petitions by holding that no useful purpose would be served by keeping the petitioners out of the Goods and Service Tax regime. By applying the above ratio, this writ petition is allowed. The petitioner is directed to file returns within a period of six weeks from the date of receipt of a copy of this order. No costs.

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NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.



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To
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1. Additional Commissioner Appeals,
Office of the Commissioner of GST
and Central Excise (Appeals),
Coimbatore Circuit Office @ Madurai,
No.4, Lal Bahadur Sastri Marg,
CR Building,
B.B.Kulam, Madurai.
2. Superintendent of GST and Central Excise,
Tuticorin North Range,
Tuticorin Division.



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B.PUGALENDHI, J.

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