BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.03.2024**

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.5071 of 2024
and W.M.P(MD)No.4866 of 2024

Tvl.Sri Durga Structurals,
Represented by its Partner
K.Sanjai ...Petitioner

Vs.

1. The State Tax Officer/Commercial Tax Officer,
Office of the Commercial Tax Department,
Tiruverumbur Assessment Circle,
Trichy – 20

2.The Branch Manager,
State Bank of India,
SME Branch,
Thoovakudi, DP Estate,
SIDCO Industries Estate,
Tanjore Road,
Tiruchirappalli – 620 015 ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus calling for the records of the impugned order in GSTIN: 33AAAFS2548D1ZM/2019-20 dated 25.07.2023 and consequential order in DRC-07 Order under Sec.73, Ref.No.ZD330723115852J dated 26.07.2023 issued by the 1st respondent and quash the same as arbitrary and in violation of principles of natural justice and consequently directing the 2nd respondent to defreeze the Bank Account 31249774958 and Cash Credit No.85947794213.

For Petitioner : Mr.S.Muthuvenkatraman
For R1 : Mr.R.Suresh Kumar
Additional Government Pleader
For R2 : Mr.Pethu Rajesh

ORDER

The petitioner is a registered tax payer. The 1st respondent has initiated proceedings as against the petitioner by issuing a Show Cause Notice on 30.06.2023 that there was a mismatch between GSTR-3B and GSTR-2A and a mismatch between GSTR-3B and GSTR-7 and also conducted an enquiry and passed an order attaching the petitioner's property, pursuant to which, the petitioner's bank account has been frozen. Hence, the petitioner is before this Court.

2. The learned counsel for the petitioner submits that the Show Cause Notice and other proceedings have been communicated to the petitioner only through portal and he is not accustomed to the same and therefore he did not participate in the enquiry conducted by the 1st respondent. The learned counsel further submits that the petitioner is having valid grounds before the 1st respondent. However, he has failed to avail the opportunity due to his ignorance in following the notice through portal. Now the bank account of the petitioner has been frozen and therefore the petitioner is not in a position to do his business and his entire business come to a stand still.

3. The learned Additional Government Pleader takes notice for the 1st respondent and submits that the impugned order has been passed after providing sufficient opportunity to the petitioner and Show Cause Notice was issued on 30.06.2023 and another intimation notice was issued under Section 73 of TNGST Act on 01.06.2022. Personal opportunity was also provided to the petitioner. The petitioner has not availed any of those opportunities and therefore, the petitioner cannot now plead he was not aware of the notice. He would further submit that the petitioner is having an appeal remedy as against the order impugned in this Writ Petition, however the same was not availed in time.

4. This Court gave its anxious consideration to the rival submissions made and perused the materials available on record.

5. The 1st respondent has noticed certain discrepancies between GSTR-3B and GSTR-7 and mismatch between GSTR-3B and GSTR-7 for the year 2019-2020. An ASMT-10 order was passed on 28.03.2022 and an intimation under Section 73 of the Act was issued on 01.06.2022. The Show Cause Notice was issued to the petitioner on 30.06.2023 and was also provided personal hearing as required under Section 75(5) of the Act. Admittedly the Show Cause Notice and other communication were made only through portal. Section 169 (D) enables the 1st respondent to issue notice through their portal. However, most of the traders are not equipped in following these notice through portal. By engaging an Auditor or an Accountant the returns are filed. Section 169 of the Act prescribe other mode of services to the tax payers. However, the 1st respondent is opting service of notice only through portal.

6. This Court in **Suguna Cutpiece v. Appellate Deputy Commissioner (ST)(GST) and Others**, reported in **2022 (2) TMI 933**, has held that no useful purpose would be served keeping the petitioners out of the Goods and Service Tax regime, as such assessees 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 immovable property will continue to batch supply such service irrespective of registration or not.

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 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. 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.

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."

7. Relying on the aforesaid judgment, this Court in W.P(MD)No.857 of 2024 has observed as follows:

"10. The petitioner in this case is engaged in the business of executing contract works for Government and its agencies. 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 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 filing 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".

8. Opportunity of hearing is a basic requirement before passing any adverse order. In the present case, admittedly, the petitioner has not availed that opportunity of personal hearing provided through portal.

9. Since the petitioner has made out a *prima facie* case, this Court is inclined to entertain this Writ Petition and grant an order of interim stay.The learned Additional Government Pleader submits that instead of granting an interim order,the petitioner can be provided one more opportunity and the date can be fixed by this Court.

10. In view of the aforesaid orders cited supra and for the sole purpose to provide an opportunity of personal hearing to the petitioner, this Court is inclined to set aside the impugned order. Accordingly, the same is set aside.

11. The petitioner, without expecting any further notice from the 1st respondent, shall appear before the 1st respondent on **27.03.2024** and shall provide his explanation, if any. The 1st respondent shall consider the same and pass a fresh order.

12. In fine, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

05.03.2024

Index : Yes / No
NCC : Yes / No
CM

Note: Issue order copy on 26.03.2024.

To,
1. The State Tax Officer/Commercial Tax Officer,
Office of the Commercial Tax Department,
Tiruverumbur Assessment Circle,
Trichy – 20

2.The Branch Manager,
State Bank of India,
SME Branch,
Thoovakudi, DP Estate,
SIDCO Industries Estate,
Tanjore Road,
Tiruchirappalli – 620 015

B.PUGALENDHI, J.

CM

W.P.(MD)No.5071 of 2024
and W.M.P(MD)No.4866 of 2024

05.03.2024