BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.6969 of 2024
and
W.M.P.(MD)Nos.6493 and 6495 of 2024

M/s.Rooban Agencies,
Rep. by its proprietor,
A.Stanley Rooban
S/o.Aruldhas,
4/52A, J.J.Arcade,
Market Road, Marthandam,
Vilavancode Taluk,
Kanyakumari District. ... Petitioner

versus

1. The Assistant Commissioner (GST Appeal),
Tirunelveli Camp Office,
Tirunelveli District.

2. The Assistant Commissioner (GST),
Commercial Tax Office,
Kuzhithurai,
Marthandam,
Vilayancode,
Kanyakumari District – 629 165. ... Respondents

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 pertaining to the impugned order of the 1st respondent in his proceedings in Na.Ka.No.A1/1216/2023 dated 21.09.2023 and quash the same and consequently, direct the respondents to revoke the cancellation of our GSTIN:33CXQPS7950A2Z5.

For Petitioner : Mr.J.Jeyakumaran

For Respondents : Mr.A.Baskaran,
Additional Government Pleader

ORDER

This writ petition has been filed as against the order dated 21.09.2023 passed by the 1st respondent, rejecting the appeal filed by the petitioner on the ground of limitation.

2. The petitioner is a whole seller and distributor of Airtel EC and he registered himself under GST Act 2017 in GSTIN 33CXQPS7950A2Z5. The petitioner has engaged a private accountant to file the returns periodically. While so, the second respondent has issued a show cause notice dated 27.12.2022 to the petitioner, through

on-line, calling for his explanation as to why his GST registration should not be cancelled under CGST Act for the reason that the returns were not filed for a period of six months. Subsequently, the second respondent, vide order dated 03.02.2023, cancelled the petitioner's 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 21.09.2023 on the ground of limitation. As against the same, the petitioner has filed this writ petition.

3. The learned counsel appearing for the petitioner submits that though a show cause notice was issued to the petitioner prior to the cancellation of GST Registration, it has been issued only through online portal. Since the petitioner is not acquainted with the same, he has failed to follow up the same and failed to participate in the enquiry. He further submits that the petitioner, after knowing the cancellation of GST Registration, filed an appeal before the first respondent, however, the same was dismissed by order 21.09.2023 on the ground of

limitation. He further further submits that since the GSTN number is mandatory for running the business and in view of the cancellation of the petitioner's GST registration, his livelihood is affected.

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 his 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 03.02.2023. He further submits that as against the order of cancellation of GST Registration, the petitioner has filed appeal before the first respondent after the period of limitation was over. Therefore, the first respondent, by order dated 21.09.2023, 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.

6. The petitioner is a whole seller and distributor of Airtel EC and enrolled under GST Act 2017. The petitioner has been provided with GSTN Registration No.33CXQPS7950A2Z5. The petitioner claims that due to ill-health, he could not file the returns for a period of six months. Therefore, the second respondent, by order dated 03.02.2023, cancelled the petitioner's GST Registration. As against the same, the petitioner has filed appeal before the first respondent with delay and the same was dismissed on the ground of limitation by order dated 21.09.2023.

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

would still continue 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.*

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 professoin 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.

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."

8. The petitioner in this case is a whole seller and distributor of Airtel EC. 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 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.

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 with a direction to the respondents to permit the petitioner to pay the due amount and penalty, if any and thereafter, restore the petitioner's GST registration**.** No costs. Consequently, connected miscellaneous petitions are closed.

22.03.2024

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

To

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   Tirunelveli Camp Office,
   Tirunelveli District.

2. The Assistant Commissioner (GST),
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B.PUGALENDHI, J.

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