



W.P.(MD) No.9277 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.9277 of 2024
and
W.M.P.(MD) No.8440 of 2024**

T.Boopathy

... Petitioner

/vs./

1.The Deputy Commissioner (ST),
(GST Appeal),
Tirunelveli Camp Office,
Tirunelveli.

2.The Commercial Tax Officer,
Thuckalay – 2 Assessment Circle,
Kanniyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd Respondent in his order in Reference No.ZA330223047578K dated 09-02-2023 and quash the same as it is illegal and unjustified and further direct the 2nd Respondent to revoke the cancellation of the Registration Certificate under the GST Act bearing GSTIN/UIN:33AHNPB8075G1ZB.



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For Petitioner : Mr.A.Satheesh Murugan

For Respondents : Mr.J.K.Jayaselan
Government Advocate

ORDER

The issue stands covered in favour of the petitioner in terms of the decision of this Court rendered in ***W.P.(MD) No.3181 of 2022 (Tvl.Natarajapathy Textiles, rep. By its Partner, A.Siva Prakasam Vs. The Commissioner of Commercial Taxes, O/o. the Principal and Special Commissioner of Commercial Taxes, Chennai and another) dated 22.03.2022.*** This order has been repeatedly followed by this Court.

2.In view of the above, the petitioner is directed to comply with the directions contained in paras 11 and 12 of the order dated 22.03.2022 made in W.P.(MD) No.3181 of 2022 (*referred supra*), which reads as under:-

“11.The case of the petitioner is quite similar to the cases of the petitioners in W.P.Nos.25048, 25877, 12738 of 2021 and etc... batch (Tvl.Suguna Cutpiece Center Vs Appellate Deputy Commissioner (ST) (GST) and others), dated 31.01.2022. There some of the petitioner had filed an appeal beyond the period of limitation either for filing application for revocation of cancellation, while some of them had directly filed a writ petition against the order cancelling the registration. While some of them filed appeal beyond the statutory period of limitation, there was further delay in filing the writ petition.



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However, considering the over all facts and circumstances of the case, it was held that no useful purpose will be served by keeping those petitioners out of the Goods and Services Tax regime, as such assessee would still continue to do business and supply goods/services. By not bringing them back to the Goods and Services Tax fold/regime, would not further the interest of the revenue. Relief was granted under similar circumstances with the following directions:

" 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 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.



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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.*

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."*

12. *I am inclined to allow this writ petition in terms of the above safeguards. Accordingly, this writ petition is allowed subject to the above conditions. No costs."*

3.The Writ Petition stands allowed subject to the above conditions. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No

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C.SARAVANAN, J.

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