BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).No.17057 of 2024

Tvl.Smart Casuals,
Represented by its Managing Partner,
Arulnaveen Chinraj. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Assistant Commissioner (ST),
Theni Circle,
SIDCO Industrial Estate,
Madurai Road,
Theni-625 531. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to impugned order of cancellation of Registration in Reference No.ZA331023253566S, dated 30.10.2023 and direct the respondents to revoke the cancellation of petitioner's GSTIN.33ADSFS8115K1ZK.

For Petitioner : Mr.R.Veera Manikandan

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

ORDER

The petitioner has challenged the impugned order, dated 30.10.2023 whereby the petitioner's GST registration was cancelled in Form GST REG-19 with effect from 01.05.2023.

2. The impugned order precedes a notice, dated 07.08.2023. Aggrieved by the same, the petitioner had also filed an appeal before the appellate authority belatedly beyond the statutory period of limitation prescribed under Section 107 of the respective GST enactment. The appellate authority has dismissed the appeal in *limine* on the ground of limitation. I do not find any error in the order of the appellate authority rejecting the appeal in *limine,* in view of the statutory limitation prescribed under the Act.

3. I am however inclined to allow this writ petition at the time of admission as the issue is squarely covered on merits by a decision of this Court rendered in ***Tvl.Suguna Cutpiece Centre Vs. The Appellate Deputy***

Commissioner (ST) (GST) and another in (2022) 99 GSIR 386**.** Operative portion of the order is reads as under:

> "*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 and etc. batch 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 and etc. batch 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."

4. The above order has already been followed consistently by this Court and has been accepted by the department also.

5. In Tvl.Blue Diamond Engineers Vs. The Commissioner of Commercial Taxes in W.P(MD)No.31271 of 2023 vide order, dated 29.04.2024 it was held as below:

"7. Having considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondents, it is noticed that even after issuance of Notification No. 23/2023-Central Tax, dated 17.07.2023, the benefit has been extended to the petitioner in W.P.No.21539 of 2023 i.e., M/s.Active Pest Control vide order dated 24.07.2023. Paragraph 6 of the said order dated 24.07.2023 in the case of M/s.Active Pest Control referred to supra reads as under:-

"6. The above Scheme has been now extended up to 31.08.2023 vide Notification No. 23/2023 – Central Tax,

> ***dated 17.07.2023. Although the above scheme applies to those whose registrations were cancelled before 31.12.2022, the intention of the Government is to allow the registrants, whose registration have been revoked to revive their registration to carry on the business.""***

6. In view of the above, the petitioner is directed to comply with the directions in ***Tvl.Suguna Cutpiece Centre*** referred supra.

7. In view of the above, this writ petition is allowed with the above terms. No costs.

29.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

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C.SARAVANAN, J.

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