BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.20279 of 2024
and
W.M.P.(MD)Nos.17202 and 17203 of 2024

M/s.SMJR Transport and Construction,
Represented by its Proprietor,
J.Rashid Ali ... Petitioner

Vs.

1.The Assistant Commissioner,
Pudukottai-II,
Thanjavur Division.

2.The Commissioner of GST & Central Excise (Appeals) Coimbatore,
No.1, Williams Road, Cantonment,
Trichy – 620 001. ... 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 impugned order passed by the second respondent in DIN No. 20240159KV000000D53B dated 10.01.2024 passed under Section 107 of the CGST Act, quash the same as illegal and against the principles of Law and consequently direct the first respondent to restore and activate the registration of the petitioner.

For Petitioner : Mr.R.Sivaraman

For R-1 : Mr.J.K.Jayaselan
Government Advocate

For R-2 : Mr.R.Gowri Shankar
Senior Standing Counsel

O R D E R

This Writ Petition is filed challenging the order-in-appeal of the second respondent dated 10.01.2024 passed under Section 107 of the CGST Act, whereby the appeal filed by the petitioner is beyond the condonation period prescribed under Section 107 (4) of the GST Act.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a proprietorship concerned registered under GST Act. While so, the GST registration of the petitioner was cancelled vide order dated 06.12.2022, on the premise that the petitioner has not filed GSTR returns for the period of more than six months as on 24.11.2022. As against the same, the petitioner has filed an appeal before the second respondent, pursuant to the same, the impugned order-in-appeal dated 10.01.2024 was passed.

3. It is further submitted by the learned counsel for the petitioner that under identical circumstances in a batch of matters in W.P.Nos.25048 of 2021 etc., this Court vide order dated 31.01.2022 allowed the said Writ Petitions, 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."

4. Recording the same, this Court is inclined to allow this Writ Petition on the above conditions, which was agreed to by the learned counsel for the petitioner and the same was not objected by the learned Senior Standing Counsel for the respondents.

5. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

27.08.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:

1.The Assistant Commissioner,
Pudukottai-II,
Thanjavur Division.

2.The Commissioner of GST & Central Excise (Appeals) Coimbatore,
No.1, Williams Road, Cantonment,
Trichy – 620 001.

MOHAMMED SHAFFIQ, J.

Nsr

W.P.(MD)No.20279 of 2024

27.08.2024