HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY ,THE TWENTIETH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI

WRIT PETITION NO: 7165 OF 2024

Between:

Kaloji Narayana Rao University of Health Sciences, Sy. No. 32, Auto Nagar Road, Warangal, Telangana State -506007 Rep. by its Registrar Dr. Sandhya Sunkaraneni, W/o. Gummadi Anil Kumar, Aged about 58 years, Telangana State

...PETITIONER

AND

1. The Deputy State Tax Officer, Warangal Urban-I, Warangal, Telangana State.
2. The Chief Commissioner, CT Complex, M.J. Road, Nampally, Hyderabad - 500001.
3. The Joint Commissioner, Warangal Urban-I Division, Warangal, Telangana State
4. State of Telangana, Rep by its Principal Secretary, Revenue (CT) Department, Secretariat Building, Saifabad, Hyderabad, Telangana
5. Union Of India, Union of India, Represented by its Secretary, Ministry of Finance, 4th Floor, A Wing, Shastri Bhawan, New Delhi 110001.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction particularly in the nature of Writ of MANDAMUS directing the 1st respondent to revoke the registration cancelled on 18/03/2023 which was cancelled for no fault of the Petitioning university, sine the petitioning university has paid all the taxes and had filed the returns till April 2022 to March 2023 which was accepted by the portal and was also issued a Form DRC-03 under Rule 142(2) and 142(3) of the GST Rules 2017 but has not issued any DRC-03 for the period April 2023 to December 2023 though, the Petitioning university had paid the taxes as the registration certificate was cancelled as violative of articles 14, 19(1)(g), 21 and 300-A of the

Constitution of India and violative of Principles of Natural Justice and contrary to the judgements of Madras High Court and consequently to set aside the cancelation certificate dated 18/03/2023

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the 1st respondent to revoke the registration certificate temporarily pending disposal of the writ petition

Counsel for the Petitioner: SRI R. RAMESH NAIK

Counsel for the Respondent Nos. 1to4: SRI P. SRI HARSHA
GP FOR COMMERCIAL TAX

Counsel for the Respondent No.5: SRI B. MUKHARJEE REP
SRI GADI PRAVEEN KUMAR,
DY. SOLICITOR GENERAL OF INDIA

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI

WRIT PETITION No.7165 OF 2024

ORDER:*(per Hon'ble Sri Justice* ***P.SAM KOSHY)***

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking the following relief:

> "...to issue an appropriate writ, order or direction particularly in the nature of writ of mandamus directing respondent No.1 to revoke the registration cancelled on 18/03/2023 which was cancelled for no fault of the Petitioning university since the petitioning university has paid all the taxes and had filed the returns till April 2022 to March 2023 which was accepted by the portal and was also issued a Form DRC-03 under Rule 142(2) and 142(3) of the GST Rules, 2017 but has not issued any DRC-03 for the period April 2023 to December 2023 though the Petitioning university had paid the taxes as the registration certificate was cancelled as violative of articles 14, 19(1)(g), 21 and 300A of the Constitution of India and violative of Principles of Natural Justice and contrary to the judgments of Madras High Court and consequently to set aside the cancelation certificate, dated 18/03/2023 and pass..."

2. Heard Sri R. Ramesh Naik, learned counsel for the petitioner, Sri P. Sri Harsha, learned Government Pleader for Commercial Tax, for respondent Nos.1 to 4 and Sri B. Mukharjee, learned counsel representing Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, for respondent No.5.

3. Learned counsel appearing for the petitioner submits that the cancellation of GST registration took place because of certain bonafide delay on the part of the petitioner-university for non-submission of the returns which were to be otherwise filed within the stipulated period. He further submits that when the petitioner came to know about the cancellation of GST registration, it approached the authorities concerned and paid the entire dues that were yet to be paid as early as on 31.01.2024 and 01.02.2024. Thereafter, the petitioner has now approached the authorities concerned for revocation of GST registration or else the petitioner would find difficulty in processing the affiliation proceedings in respect of various colleges under the petitioner-university.

4. Perusal of the record would show that, though the petitioner was well aware of the cancellation of the GST registration *vide* order, dated 18.03.2023 and it had also taken steps for clearance of all the dues by 31.01.2024 and 01.02.2024 there does not seem to be any specific application been made under Section 30 of the Central

Goods and Services Tax Act, 2017 (for short "the Act") seeking for revocation of cancellation of G.S.T. registration.

5. Learned counsel for the petitioner, today, undertakes that the petitioner shall move an application for revocation within a period of two weeks from today. Though, it is beyond the prescribed time limit under Section 30 of the Act, the petitioner is willing to pay whatever late fee/penalty be imposed for the delay in submission of the returns, and the respondents, upon such receipt of application from the petitioner shall immediately revoke the cancellation of registration.

6. It is relevant at this juncture to take note of the recent decision of the High Court of Delhi in the case of ***Kritika Agarwal v. Union of India and others***[1], wherein the High Court in a case of cancellation of GST registration had observed that:

> "...the measure of cancellation of GST must be exercised with circumspection and only in cases,

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[1]W.P.(C) 9424/2023 and CM Nos.36000/2023 &36001/2023

where it is necessary". This in otherwise means that the intention of the Hon'ble Delhi High Court by allowing the writ petition was that the authorities concern should take a more pragmatic approach so far as the case where GST registration is concerned and cancellation should not be restored in a mechanical manner or as a matter of routine. Similar decision has also been passed by Division Bench of this Court in W.P.No.36174 of 2022 vide order dated 20.09.2021, where the Division Bench had set-aside the order of the appellate authority and the matter had been remanded back for fresh consideration on its own merits."

7. Likewise, there is yet another decision from the High Court of Madras in the case of ***Tvl. Sastha Engineering Works, Rep by its Partner v. State Tax Officer (Circle) and Another***[2] wherein the High Court of Madras in paragraph Nos.4 to 7 has held as under:

> "**4.** It is submitted by the learned counsel for the Petitioner that in identical circumstances, this Court, in the case of Tvl.Suguna Cutpiece Vs The Appellate Deputy Commissioner (ST) (GST) and others (W.P.Nos. 25048, 25877, 12738 of 2021 etc., batch), dated 31.01.2022, issued the following directions:
>
> "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

[2] 2022 SCC OnLine Mad 8452

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.

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."

5. The same has been consistently thereafter followed by this Court in various decisions, viz.,

a) *M/s.Maaruthi Foundations Private Limited Vs Deputy Commissioner (ST) (FAC),* reported in 2022 (5) TMI 405;

b) *J. Jayakrishnan Vs The Additional Chief Secretary/Commissioner of Commercial Taxes, Chennai* reported in 2022 (7) TMI 1226;

c) *TVL.Jeyalakshmi Store represented by its Proprietor, Sivanu Pandian Vs Commissioner of Commercial Taxes* reported in 2022 (7) TMI 1275 ;

d) *M/s.Pearl and Company Vs The Commissioner of Commercial Taxes* in W.P(MD)No.19127 of 2022.

6. In view of the fact that this Court has been consistently following the directions issued in the case of *Tvl.Suguna Cutpiece Vs Appellate Deputy Commissioner (ST) (GST)* and others (W.P.Nos.25048, 25877, 12738 of 2021 etc., batch) and the Revenue/Department has also accepted the said view as evident from the fact that no appeal has been filed in any of the matters, this Court intends to follow the above order of this Court.

7. In view of the same, this Court feels that the benefit extended by this Court in the earlier orders referred to above in Suguna Cutpiece Centre's case cited supra, may be extended to the Petitioner."

8. Given the said factual matrix of the case as also the judicial pronouncements that are referred to in the preceding paragraphs, if the default on the part of the petitioner is only so far as non-furnishing of the returns, we are of the considered opinion that subject to the petitioner making good the default, the said GST registration of the petitioner-university would get restored which would enable the petitioner to process the affiliation proceedings in respect of the various colleges under the petitioner-university, which would also generate GST revenue to the respondent authorities as well.

9. With the above observations, this Writ Petition stands allowed. However, there shall be no order as to costs.

Consequently, miscellaneous petitions pending, if any shall stand closed.

Sd/- MOHD. SANAULLAH ANSARI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Deputy State Tax Officer, Warangal Urban-I, Warangal, Telangana State.
2. The Chief Commissioner, CT Complex, M.J. Road, Nampally, Hyderabad - 500001.
3. The Joint Commissioner, Warangal Urban-I Division, Warangal, Telangana State
4. The Principal Secretary, Revenue (CT) Department, Secretariat Building, Saifabad, Hyderabad, Telangana
5. The Secretary, Union Of India, Union of India, Ministry of Finance, 4th Floor, A Wing, Shastri Bhawan, New Delhi 110001.
6. Two CCs to GP FOR COMMERCIAL TAX ,High Court for the State of Telangana,at Hyderabad [OUT]
7. One CC to SRI. GADI PRAVEEN KUMAR, DY. SOLICITOR GENERAL OF INDIA [OPUC]
8. One CC to SRI. R. RAMESH NAIK, Advocate [OPUC]
9. Two CD Copies

HIGH COURT

PSK,J &
NTR,J

DATED:20/03/2024

ORDER

WP.No.7165 of 2024

ALLOWING THE WRITPETITION
WITHOUT COSTS

12 copies

23/3/24