

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.08.2022

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CORAM:

THE HON'BLE DR.JUSTICE ANITA SUMANTH

WP.Nos.10663, 11818, 11734, 11860, 14369, 14931, 15247, 15382, 16529, 17603, 17617, 17850, 18306, 18698, 19307, 19984 & 20604 of 2022 and WMP.Nos.11255, 11192, 11195, 11295, 13581, 13584, 14153, 14420, 14422, 14535, 15818, 16885, 17201, 17203, 18057, 18569, 19277, 19727 & 19732 of 2022

WP.Nos.10663 of 2022

M.Mallika Mahal,
Represented by its Proprietor,
Manthiram,
S/o. Sunmugavel,
No.1. M Mallika Mahal,
Red Hills Main Road,
Bhanu Nagar,
Pudur, Ambattur, Chenaai

...Petitioner

Vs.

- 1.The Commissioner of Central GST and Central Excise,
C.T. Annexure Building, 3rd Floor,
No.1, Greams Road,
Chennai-600006
- 2.The Deputy Commissioner,
GST-Appeal, Chennai-II
C.T. Annexe Building, 3rd Floor,
No.1, Greams Road,
Chennai-600006
- 3.The Assistant Commissioner,
Circle Officer, (ST and GST),
Ambattur Assessment Circle,
Ambattur, Chennai.

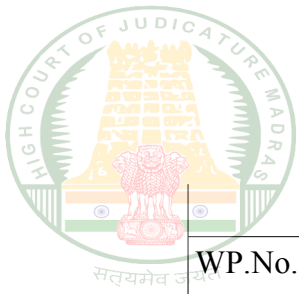
...Respondents



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Prayer in WP.Nos.10663 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of certiorarified mandamus to call for the records on the file of the 2nd respondent in connection with impugned order in R.C.No.1641/2021/A1 dated 19.01.2022 against the rejection of the application fro revocation of cancellation by the order of 3rd respondent in reference no.ZA330519033650P dated 13.05.2019 and quash the same and consequently direct the respondent to consider the petitioner's case to revoke the cancellation of registration pertaining to the registration No.33AAOFM8814A1ZF dated 02.08.2018.

<i>WP.Nos.</i>	<i>For Petitioners</i>	<i>For Respondents</i>
WP.No.10663 of 2022	Mr.J.Vijayaraja	Mr.V.Prasanth Kiran Government Advocate
WP.No.14369 of 2022	Mr.P.Rajkumar	Mr.C.Harsha Raj, Additional Government Pleader
WP.No.15382 of 2022	Ms.Akila S.	Mr.V.Prasanth Kiran Government Advocate
WP.Nos.17603 & 15247 of 2022	Mr.R.Senniappan	Mr.V.Prasanth Kiran Government Advocate
WP.No.17617 of 2022	Mr.K.M.Malarmannan	Mr.V.Prasanth Kiran Government Advocate
WP.No.17850 of 2022	Mr.S.Ramanan	Mrs.K.Vasanthamala, Government Advocate
WP.No.18306 of 2022	Mr.K.Soundara Rajan	Mr.C.Harsha Raj, Additional Government Pleader
WP.No.19307 of 2022	Mr.P.V.Sudakar	Mr.C.Harsha Raj, Additional Government Pleader
WP.No.19984 of 2022	Mr.B.Raveendran	Mr.V.Prasanth Kiran Government Advocate
WP.No.20604 of 2022	Mr.P.Rajkumar	Mr.Umesh Rao Senior Standing Counsel
WP.No.16529 of 2022	Mr.K.M.Malarmannan	Mr.P.Srinivas, Standing Counsel
WP.No.18698 of 2022	Mr.S.Rajasekar	Mr.C.Harsha Raj,



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		Additional Government Pleader
WP.No.11818 of 2022	Mr.P.V.Sudakar	Mr.V.Prasanth Kiran Government Advocate
WP.No.11860 of 2022	Mr.B.Raveendran	Mr.V.Prasanth Kiran Government Advocate
WP.No.11734 of 2022	Mr.S.Satish	Mr.TNC Kaushik, Additional Government Pleader
WP.No.14931 of 2022	Mr.S.Ramanathan	Mr.R.Siddharth Government Advocate

ORDER

All writ petitioners have challenged orders passed on various dates cancelling their registrations under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 (in short 'Act').

2. The petitioners have missed the bus in regard to several opportunities that were extended to them post-cancellation of the registrations by way of Amnesty Schemes wherein dealers were granted extension of time to take necessary steps to restore the cancelled registrations.

3. The Act contains two in built modes to enable revocation of cancellation or restoration thereof. The first is the remedy under Section 30 which benefit has to be availed within thirty days from date of cancellation of order. None of these petitioners in this batch have filed application in terms of Section 30.

4. The second remedy relates to filing of an appeal before the Appellate Authority and has to be availed within a period of three months from the date of communication of the cancellation order to the dealer. Barring some petitioners, that is, petitioners in WP.Nos.18698, 17850, 14931, 14369 and 18306 of 2022,



none of the petitioners before me have availed this remedy.

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5. The Petitioner in WP.No.14931 of 2022 is stated to have availed appellate remedy, though belatedly with a delay of one year and eight days. The appeal was accompanied by returns for a period of six months with the admitted tax. In the case of petitioner in WP.No.17850 of 2022 the delay is stated to be of a period of two years, three months and three days. The appeal was accompanied by returns for a period of six months with the admitted tax.

6. In the case of petitioner in WP.No.18698 of 2022, the delay is stated to be for a period of 165 days. The appeal was accompanied by returns for a period of six months with the admitted tax. In all the above cases, the appellate authority rejected the appeals as against which the present writ petitions have been filed. In WP.No.14369 of 2022, the order of cancellation had come to be passed prematurely, when the default in filing return was itself only for one month, contrary to the statutory provision. Be that as it may, return for the month of September 2020 is stated to have been filed along with admitted tax for both months.

7. All other petitioners have approached this Court direct, by way of writ petition, seeking the relief of restoration. A learned Single Judge of this Court in a batch of writ petitions in WP.Nos.25048 of 2021 and batch has, by way of an order dated 31.01.2022, considered the cases of identically placed petitioners as before me. In the cases of those petitioners as well, orders of revocation had been passed



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and some of the petitioners had approached the assessing authority in terms of Section 30 seeking revocation, some had appealed the orders of cancellation under Section 107 and others had merely approached this Court under Article 226 of the Constitution of India.

8. The learned Judge has considered interim events including the position that Amnesty Schemes had not been availed by those petitioners. In fine, the learned Judge accepts the case of the petitioners, imposing certain conditions in para 229 of the order. A specific query was put to the State Counsel as to whether order dated 31.01.2022 has attained finality. He brings to my notice a communication that has been addressed by the Additional Chief Secretary/Commissioner of Commissioner of Commercial Tax to the GST Council on 31.03.2022 seeking the view of the Council and its guidance/directions in regard to the order of this Court dated 31.01.2022.

9. There has been no response to the above communication and the State, like Samuel Beckett's Godot, has merely been waiting, much past the time for filing of writ appeal before this Court. In my view, this tantamounts to their having accepted the order of this Court dated 31.01.2022 as a conscious decision has been taken by the State to let the limitation slip.

10. The State also confirms that the directions as set out in order dated 31.01.2022 have been implemented in the case of all those petitioners. In light of the aforesaid discussion, the following directions at paragraph 129 of order dated



31.01.2022, extracted below, shall be taken to be passed in the present matter as

well, effective from date of receipt of this order.

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i. The petitioners are permitted 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. On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.

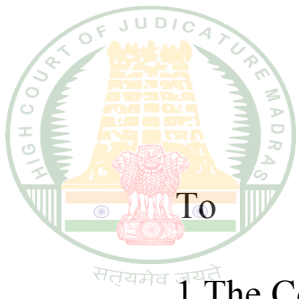
iv. The respondents shall take suitable steps by instructing GST Network, New Delhi to make suitable charges in the architecture of the GST Web Portal to allow these petitioners to file their returns and to pay the tax/penalty/fine.

v. The above exercise shall be carried out by the respondents within a period of forty five (45) days from the date of receipt of a copy of this order.

11. These writ petitions are allowed in the above terms. No costs. Connected miscellaneous petitions are closed.

17.08.2022

Index:Yes
Speaking Order
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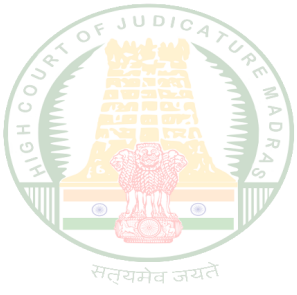
To
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Circle Officer, (ST and GST),
Ambattur Assessment Circle,
Ambattur, Chennai.



WP.Nos.10663 of 2022 and



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Dr.ANITA SUMANTH,J.

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