

W.P.(MD).No.3181 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.03.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).No.3181 of 2022

Tvl.Natarajapathy Textiles,
Represented by its Partner,
A.Siva Prakasam.

... Petitioner

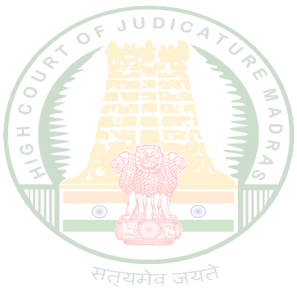
Vs.

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) (Circle),
Sivakasi – I Assessment Circle,
Commercial Taxes Office,
458/3, Periyakulam Colony,
Srivilliputhur Road,
Sivakasi,
Virudhunagar District – 626 123.

...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 the impugned order of the second respondent in Reference No.ZA331119025342Z, dated 07.11.2019 and quash the same and consequently, direct the respondents to revoke the cancellation of the petitioner's GSTIN:33AAAFN7407Q1Z0.



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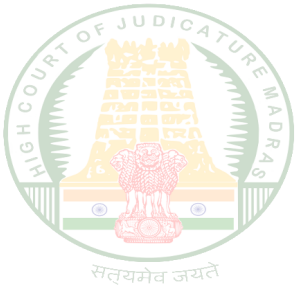
For Petitioner : Mr.B.Rooban
For Respondents : Mr.V.Nirmal Kumar,
Government Advocate.

ORDER

This Writ Petition has been filed for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order, dated 07.11.2019 of the second respondent bearing Reference No.ZA331119025342Z and quash the same and consequently, to direct the respondents to revoke the cancellation of the petitioner's GSTIN: 33AAAFN7407Q1Z0.

2. By the impugned order dated 07.11.2019, the second respondent has cancelled the Goods and Services Tax (GST) Registration of the petitioner, as the petitioner had failed to file returns continuously for a period of six months. Prior to passing of the impugned order, the second respondent had issued a Show Cause Notice, dated 15.10.2019 to the petitioner to show cause as to why the Goods and Services Tax (GST) Registration of the petitioner should not be cancelled.

3. It appears that the petitioner had not replied to the said Show Cause Notice, which resulted in passing of the impugned order, dated 07.11.2019, cancelling the Goods and Services Tax Registration of the petitioner.



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4. Thereafter, the petitioner filed an application for revocation of the cancellation of a registration which was rejected as time barred. The petitioner has approached this Court by way of this petition seeking for the above relief.

5. Mr.B.Rooban, the learned Counsel for the petitioner submits that the second respondent has issued a Show Cause Notice, dated 15.10.2019, but the petitioner was unable to give a reply to the said Show Cause Notice, due to the health issues. It is further submitted that even though the petitioner has not replied to the said Show Cause Notice, the respondents ought to have given a justifiable reason for cancelling of the Goods and Services Tax of the Registration of the petitioner. In this connection, the learned Counsel for the petitioner has relied on the recent decision of this Court 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 and submits that the present writ petition deserves to be allowed in terms of the above order.

6. The learned Counsel for the petitioner further submits that even though the registration was cancelled by the second respondent, vide impugned order, dated 07.11.2019, the same was not within the knowledge of the petitioner due



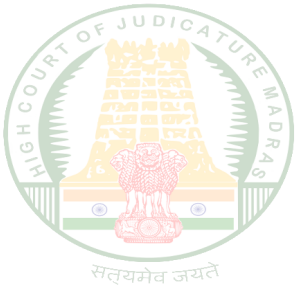
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to the lock down imposed by the Government on account of the outbreak of covid-19 pandemic. Subsequently, the petitioner filed pending returns for the months up to October 2019.

7. Opposing the prayer Mr.V.Nirmal Kumar, the learned Government Advocate for the respondents submits that the second respondent has cancelled the Goods and Services Tax filed by the impugned order, dated 07.11.2019, on the ground that the petitioner has not responded to the Show Cause Notice, dated 15.10.2019.

8. The learned Government Advocate for the respondents further submits that the Principal Secretary/Commissioner of Commercial Taxes vide the proceedings in P/35/2021-ADC (RC AND M)-CCT-CTD, dated 07.04.2021 in paragraph 6.5 has clarified as under:

"6.5. If any appeals have been filed against the Cancellation of Registration order by the Tax Payers, and if the said period falls beyond the period the prescribed period specified under Section 107, then the Deputy Commissioner, GST Appeals and Joint Commissioner, GST Appeals shall admit the application and passed order on merits if the prescribed period specified under Section 107 available with effect from 15.03.2021 after excluding the period from 15.03.2020 to 14.03.2021."



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9. The learned Government Advocate for the respondents further submits that the petitioner was given enough time to file an application against the impugned order but failed to exercise such action and therefore, no latitude should be given to the petitioner to restore the GST Registration under the provisions of the Goods and Services Tax Act. It is therefore submitted that the writ petition is liable to be dismissed.

10. I have perused the impugned order issued that arises for consideration.

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. 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



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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 immovable 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.

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



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clear, intention is to only facilitate and not to debar and de-recognised assesses from coming back into the GST fold.

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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.

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



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taking advantage of this order.

WEB COPY *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.

22.03.2022

Index : Yes / No

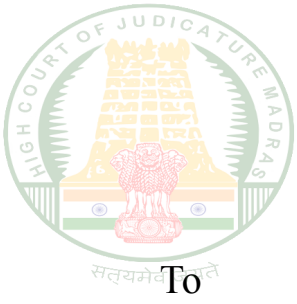
Internet : Yes/ No

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

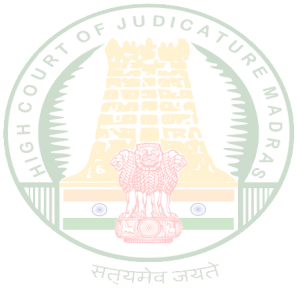


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of Commercial Taxes,
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C.SARAVANAN,J.

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