

W.P.(MD)No.198 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.198 of 2024

M/s.Sri Ganesh Constructions,
Rep. by its Partner G.Meenakshi Sundaram,
GSTN 33ACAFS3704M2Z6,
28, A.Meenakshipuram (West),
Thoothukudi – 628 002.

... Petitioner

versus

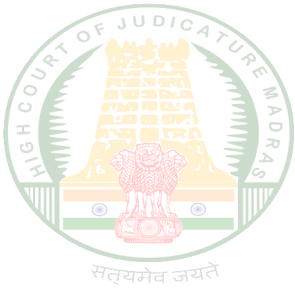
The Assistant Commissioner (ST)
Tuticorin I Assessment Circle,
Commercial Tax Buildings,
Tuticorin.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in Reference No.ZA330223018229Y dated 3.02.2023 and to quash the same as illegal, arbitrary and direct the respondents to revoke the cancellation of petitioners GSTN registration No. 33ACAFS3704M2Z6 within the time as may be directed by this Court.

For Petitioner : Mr.N.Sudalaimuthu

For Respondent : Mr.A.Baskaran,
Additional Government Pleader



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ORDER

This writ petition has been filed as against the cancellation of the petitioner's GSTN Registration No.33ACAFS3704M2Z6 by the respondent vide order dated 03.02.2023.

2. The learned Counsel for the petitioner submits that the petitioner is engaged in the business of executing contract works for Government and its agencies. The petitioner himself has registered under SGST Act 2017 in GSTIN 33ACAFS3704M2Z6. The petitioner has engaged a part time accountant to file returns periodically. While so, the petitioner was issued with the show cause notice dated 25.01.2023 to appear for enquiry. However, without hearing him the impugned order has been passed by the respondent cancelling his registration under the GST Act.

3. The learned Counsel for the petitioner submits the petitioner was filing his returns through his accountant regularly. However, the petitioner later on came to know that due to his ill-health, he did not file the returns in time. He further submits that though the appeal remedy is available under

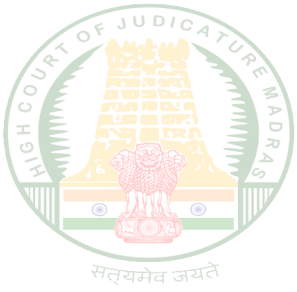


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Section 107 of GST Act, in view of the statutory limitation period prescribed under the Act the GST portal does not accept his appeal. He further submits that since the GSTN number is mandatory for running his business and in view of the cancellation of his registration, his livelihood is affected and therefore, he prays this Court to quash the impugned order.

4. The learned Counsel for respondent submits that the petitioner has been provided with sufficient opportunities before cancellation of his registration under the GSTN Act. A show cause notice was issued to the petitioner as early as on 25.01.2023 and sufficient time was given to him to offer his explanation. Since the petitioner failed to respond to the show cause notice, the impugned order came to be passed under the ambit of GST Act. He further submits that the petitioner failed to file the appeal within the prescribed limitation period under Section 107(4) of the GST Act. Therefore there is no reason to interfere with the impugned order.

5. This Court considered the rival submissions and perused the materials placed on record.



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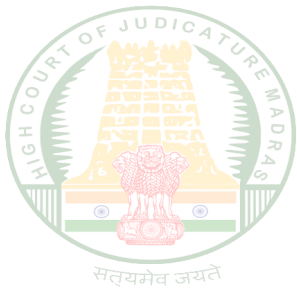
6. The petitioner is engaged in the business of executing contract

works for Government and its Agencies and enrolled under SGST Act 2017.

The petitioner has been provided with GSTN Registration No. 33ACAFS3704M2Z6. The impugned order has been passed cancelling his registration under the GST Act due to non filing of the returns. The petitioner claims that though he had handed over the documents to his accountant, due to his ill-health, he could not file the returns in time. The portal is not opening and therefore he could not file the appeal. The respondent claims that the Statue prescribes specific limitation period of 90 days to file an appeal and hence the portal will automatically get closed after the limitation period is over.

7.A similar issue has been dealt with by a Hon'ble Division Bench of Bombay High Court in WP.No.11833 of 2022, wherein it has been held as follows:

“8. We have considered the submissions advanced by both the sides. It appears that the petitioner was earning his livelihood through his fabrication business and requires registration under GST Act to run the business. The entire world suffered during the pandemic. The small scale

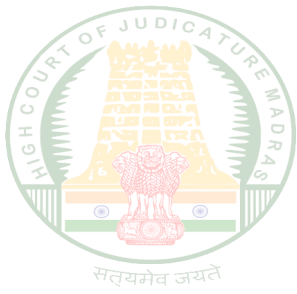


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industrialists and service providers like petitioner lost their business for more than two years. The financial losses suffered during this time cannot be ignored particularly when it comes to small scale businesses and service providers. To add apathy to this situation, the petitioner suffered medical emergency. He was required to undergo medical treatment for heart disease and the procedure like angioplasty. The stringent provisions of GST Act took its own course. The petitioner suffered cancellation of registration. Even he lost his appellate remedy because of lapse of limitation. The petitioner has been practically left remediless. He seeks to invoke jurisdiction of this Court under Art. 226 of the Constitution of India.

9. In our view, the provisions of GST enactment cannot be interpreted so as to deny right to carry on Trade and Commerce to any citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of shortcomings in the scheme of GST enactment. The right to carry on trade or profession cannot be curtailed contrary to the constitutional guarantee under Art. 19(1)(g) and Article 21 of the Constitution of India. If the person like petitioner is not allowed to revive the registration, the state would suffer loss of revenue and the ultimate goal under GST regime will



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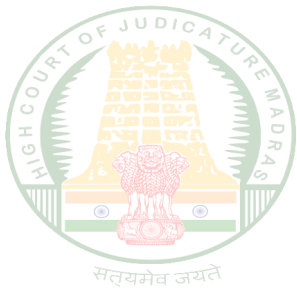
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stand defeated. The petitioner deserves a chance to come back into GST fold and carry on his business in legitimate manner.

10. There is one more aspect as far as the issue regarding limitation in filing the appeal under Section 107 of MGST Act is concerned. Indeed the Deputy Commissiosner of State Tax has no power to condone the delay beyond 30 days. But then one cannot overlook the aspect of provisions stipulating limitations. The objective is to terminate the lis and not to divest a person of the right vested in him by efflux of time.

11. Since it is merely a matter of cancellation of registration, the question of limitation should not bother us since it cannot be said that any right has accrued to the State which would rather be adversely affected by cancellation.

12. In this regard, a reference can be made to the judgment of the Supreme Court in the case of Mafatlal Industries Ltd. Vs Union of India reported in (1997) 5 SCC 536. The supreme court observed that the jurisdiction of the High Court under Art. 226 of the Constitution of India or Supreme Court under Article 32 cannot be restricted by the

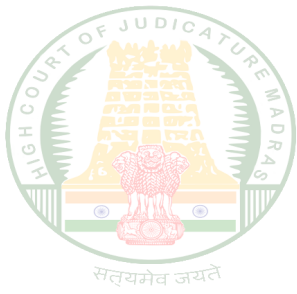


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provision of any Act to bar or curtail remedies. True that while exercising the constitutional power, the Court would certainly take note of legislative intent manifested in the provisions of the Act and would exercise jurisdiction consistent with the provisions of enactment. The constitutional Courts in exercise of such powers cannot ignore law nor can it override it.

13. Applying the aforesaid guidelines to the facts of the present case, we find that the petitioner, who is sufferer of unique circumstances resulting from pandemic and his health barriers, would be put to great hardship for want of GST registration. The petitioner who is small scale entrepreneur cannot carry on production activities in absence of GST registration. Resultantly, his right to livelihood would be affected. Since his statutory appeal suffered dismissal on technical ground, we cannot allow the situation to continue. We find that, in the facts and circumstances of this case it would be appropriate to exercise our jurisdiction under Art. 226 of the Constitution of India. 14 Even looking to the object of the provisions under GST Act, it is not in the interest of the government to curtail the right of the entrepreneur like petitioner. The petitioner must be allowed to continue business and to contribute to the state's revenue. The learned advocate for



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the petitioner has submitted before us that the petitioner is ready and willing to pay all the dues along with penalty and interest as applicable. In the light of the above submission, we are inclined to allow the writ petition as under :-

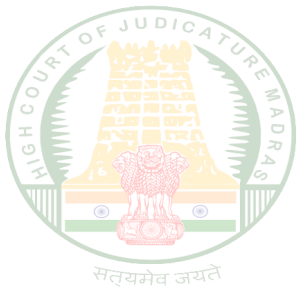
(i) The writ petition is allowed.

(ii) The order dated 28-02-2022 suspending the GST registration, the order dated 14-03-2022 cancelling GST registration of the petitioner passed by the State Tax Officer and the order dated 21-10-2022 passed by the Dy. Commissioner of Tax, Aurangabad (Appeal) No.DC/APP/E-001/ABAD/GST/323/ 2022-2023 are quashed and set aside.

(iii) We hold and declare that the registration No. 27AHQPD2485F1Z7 in the name of the petitioner is valid, from 28-02-2022 onwards subject to the condition that the petitioner files up to date GST returns and deposits entire pending dues along with applicable interest, penalty, late fees in terms of Rule 23 (1) of MAST Rules, 2017. (iv) The Rule is made absolute in above terms.”

8. The High Court of Uttarakhand in Special Appeal No.123 of 2022, dated 20.06.2022 in a similar situation has observed as follows:

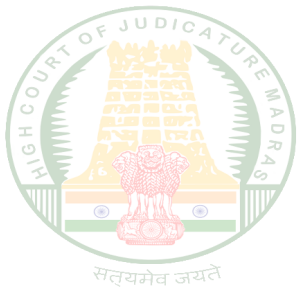
“8) Viewing from another angle, it is apparent that the law made by the Parliament as well as the Legislature



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with regard to the appeals is very strict, insofar as, that it does not provide an unlimited jurisdiction on the First Appellate Authority to extend the limitation beyond one month after the expiry of the prescribed limitation. In such case, the petitioner/appellant is put to hardship and is left without remedy. In such cases, the party concerned may face starvation because of denial of livelihood for want of GST Registration. In this case, the petitioner/appellant is a semi-skilled labourer working as a painter doing painting on doors, windows of the houses. Now-a-days bills for any work executed for a private player or, even for the Government agency, are drawn on-line. In most cases, the payments are made direct to the bank on production of the bill with the GST registration number. In the absence of GST registration number, a professional cannot raise a bill. So, if the petitioner is denied a GST registration number, it affects his chances of getting employment or executing works. Such denial of registration of GST number, therefore, affects his right to livelihood. If he is denied his right to livelihood because of the fact that his GST Registration number has been cancelled, and that he has no remedy to appeal, then it shall be violative of Article 21 of the Constitution as right to livelihood springs from the right to life as enshrined in Article 21 of the Constitution of India. In this case, if we allow the situation so prevailing to continue, then it will



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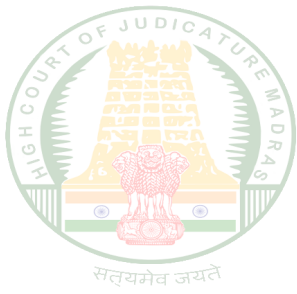
amount to violation of Article 21 of the Constitution, and right to life of a citizen of this country.”

9. This Court in ***Suguna Cutpiece Vs Appellate Deputy Commissioner (ST)(GST)*** and others reported in ***2022 (2) TMI 933*** wherein it was held that no useful purpose would be served keeping the petitioners out of the Goods and Service Tax regime as such the assessee would still continue to his businesses and supply goods and services and the relevant paragraphs are extracted as under:

“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 immoveable property will continue to batch supply such service irrespective of registration or not.



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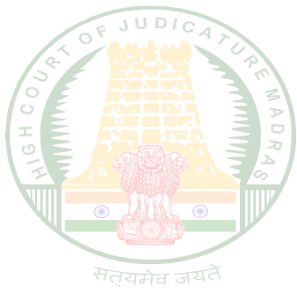
219. *Therefore, if such a person is not allowed to revive the registration, the GST will not be paid, unless of course, the recipient is liable to pay tax on reverse charge basis. Otherwise, also there will be no payment of value added tax. The ultimate goal under the GST regime will stand defeated. 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 clear, intention is to only facilitate and not to debar and de-recognised assesses from coming back into the GST fold.*

221. *While exercising jurisdiction, under [Article 226](#) of the Constitution, the powers of the Court to do justice i.e., what is good for the society, can neither be restricted nor curtailed. This power under [Article 226](#) can be exercised to effectuate the rule of law.*

222. *Therefore, power of this Court under [Article 226](#) of the Constitution of India is being exercised cautiously in favour of the petitioners as this power is conceived to serve the ends of law and not to transgress them.*

223. *In [Mafatlal Industries Ltd. Vs. Union of India, \(1997\) 5 SCC 536](#), in Paragraph No.77, the Hon'ble Supreme Court observed that "So far as the jurisdiction of the High Court under [Article 226](#) — or for that matter, the jurisdiction of this Court under [Article 32](#) — is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under [Article 226/Article 32](#), the Court would certainly take note of the legislative intent manifested in the provisions*



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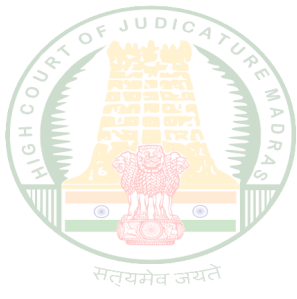
of the Act and would exercise their jurisdiction consistent with the provisions of the enactment. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it.

224. Notwithstanding the fact that the petitioners have shown utter disregard to the provisions of the Acts and have failed to take advantage of the amnesty scheme given to revive their registration, this Court is inclined to quash the impugned orders with grant consequential reliefs subject to terms.

225. The provisions of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of the defect in the scheme of the GST enactments. The right to carry on trade or profession also cannot be curtailed. Only reasonable restriction can be imposed. To deny such rights would militate against their rights under [Article 14](#), read with [Article 19 \(1\)\(g\)](#) and [Article 21](#) of the Constitution of India.

226. As original or as appellate authority exercising power under the respective enactments, quasi judicial officers were bound by the provisions of the Act and the limitation under it, they have acted in accordance with law. They cannot look beyond the limitations prescribed under provisions of the Act. Therefore, no fault can be attributed to their action.

227. This is a fit case for exercising the power under [Article 226](#) of the Constitution of India in favour of the petitioners by quashing the impugned orders and to grant consequential relief to the petitioners. By doing so, the Court is effectuating the object under the GST enactment of levying and collecting just tax from every assessee



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who either supplies goods or service. Legitimate Trade and Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance. Therefore, the impugned orders deserve to be quashed.

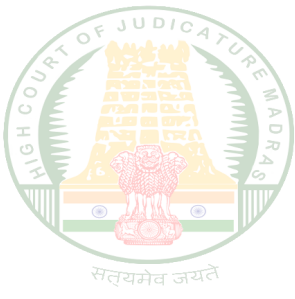
228. These petitioners deserve a chance and therefore should be allowed to revive their registration so that they can proceed to regularize the defaults. The authorities acting under the Act may impose penalty with the gravity of lapses committed by these petitioners by issuing notice. If required, the Central Government and the State Government may also suitably amend the Rules to levy penalty so that it acts as a deterrent on others from adopting casual approach.

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.



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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.

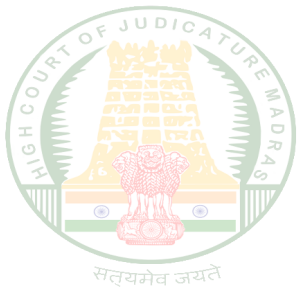
viii. On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.

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.

xi. No cost.

xii. Consequently, connected Miscellaneous Petitions are closed.”

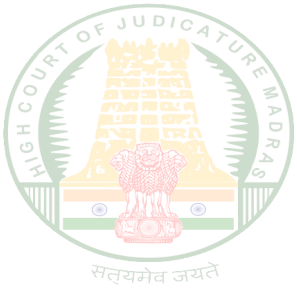


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10. The petitioner in this case is engaged in the business of executing contract works for Government and its agencies. Most of the small scale entrepreneurs like carpenters, electricians, fabricators etc... are almost uneducated and they are not accustomed with handling of e-mails and other advance technologies. Though they are providing e-mail IDs at the time of Registration, the applications are prepared by some agents by creating an e-mail IDs, however, on reality most of the Traders are not accustomed with handling of e-mails. They are also not aware about the consequences of not paying the Returns in Time. The department shall workout the possibilities of issuing these notices in the respective regional languages and also by SMS and registered post. So that, the uneducated traders can also respond to these notices to some extent, otherwise, these notices will be an empty formality and will not serve any purpose for which it has been issued.

11. The object of any Government is to promote the trade and not to curtail the same. The cancellation of registration certainly amounts to a capital punishment to the traders, like the petitioner.



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12. In similar circumstances, this Court, in *Suguna Cutpiece Vs.*

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Appellate Deputy Commissioner (ST) (GST) and others reported in *2022(2) TMI 933*, allowed the writ petitions by holding that no useful purpose would be served by keeping the petitioners out of the Goods and Service Tax regime. By applying the above ratio, this writ petition is allowed and the impugned order dated 03.02.2023 is set aside. The petitioner is directed to file returns within a period of six weeks from the date of receipt of a copy of this order. No costs.

08.01.2024

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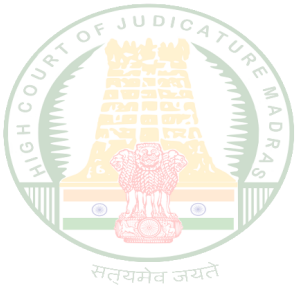
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To

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