

W.P.(MD)No.19127 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **23.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

W.P.(MD)No.19127 of 2022

and

W.M.P.(MD).No.13962 of 2022

M/s.Pearl and Co,
GSTIN 33ASLPG6104C1ZB,
Represented by its Proprietor Mr.Devasahayam
17F, 3rd Mile Pudukudi second street,
Thoothukudi-628 008.

.. Petitioner

Vs

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special
Commissioner of Commercial Taxes,
Ezhilagar, Chepauk, Chennai-600 005.

2.The State Tax officer (Circle),
Ettayapuram Assessment Circle,
Commercial Taxed Buildings,
Ettayapuram.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in Reference No.ZA3302220253439 dated 07.02.2022 and to quash the same as illegal, arbitrary and direct the respondents to revoke the cancellation of petitioners GSTIN Registration No.33ASLPG6104C1ZB.



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For Petitioner : Mr.S.Karunakar
For Respondents : Mr.S.Kameswaran
Government Advocate

ORDER

This Writ Petition has been filed to quash the order passed by the second respondent in Reference No.ZA3302220253439 dated 07.02.2022, and consequently direct the respondents to revoke the cancellation of petitioners GSTIN Registration No.33ASLPG6104C1ZB.

2.Mr.S.Kameswaran, learned Government Advocate takes notice for the respondents. By consent, this writ petition is taken up for final disposal at the admission stage itself.

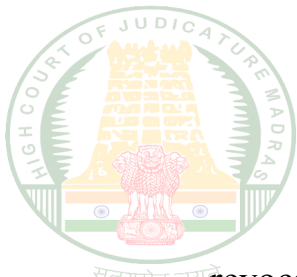
3.The learned counsel appearing for the petitioner submitted that the petitioner is the proprietor of M/s.Pearl and Co and he is having registration No.GSTIN 33ASLPG6104C1ZB. The petitioner used to purchase materials from both registered and unregistered dealers and the same were used in the execution of works contract. Further, the petitioner used to engage private accountant for the purpose of filing returns and who alone had the access to the GST portal for filing returns.



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The petitioner used to furnish all the invoices, purchase and sales transactions particulars to the part time accountant, who uploaded monthly returns, GSTR-3B returns within the due dates and have also made payment of GST within time. This being so, the petitioner was severely affected by stomach pain and he had taken medical treatment, which was latterly diagnosed as Hernia and hence, he had undergone surgery and bed rest for several months. During this period, the civil work, undertaken by the petitioner were only executed to a limited extent and the staff not uploaded the progress of work and hence, the returns could not be filed. During the month of July 2022, the GSTIN registration was cancelled. Therefore, they were unable to avail Input Tax Credit. He further submitted that the show cause notice, dated 05.01.2022, was issued by the second respondent. Due to cancellation of GSTIN registration, the petitioner is unable to carry on his business. He further submitted that by restoring the registration number, the state would benefit by receiving the tax components. The petitioner attempted to file a representation to revoke the cancellation of registration. The same was not accepted, since the request for revocation is not filed within the statutory period of 90 (30+60) days. The representation for



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revocation of cancellation of registration could not be done.

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4.He further submitted that the Principal Secretary/Commissioner of Commercial Taxes vide proceedings, dated 07.04.2022 citing the order of the Hon'ble Apex Court directed all the its officials of the department to direct the proper officers to exclude the period from 15.03.2020 to 28.02.2022 for the purpose of computing the limitation. Further, in support of his contention, he submitted that on similar circumstances in several cases, this Court condoned the delay. He relied on the decision of this Court 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)*, dated 31.01.2022, wherein, this Court condoned the delay.

5.The learned Government Advocate appearing for the respondents submitted that the petitioner though, initially registered with department thereafter failed to upload the monthly returns regularly. As per Section 29(2) TNGST Act, the person who fails to file the return for a continuous period of six months, his registration automatically cancelled. He further



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submitted that a show cause notice, dated 05.01.2022, was issued by the second respondent. The petitioner failed to respond to the same and thereafter, the registration was cancelled. Hence, he prayed for dismissal of the writ petition.

6.Considering the submission and perusal of the materials, this Court is of the view that restoring the registration would not cause any harm to the department on the other hand it would be beneficial for the state to earn revenue. Further, 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)*, dated 31.01.2022. There some of the petitioner 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 the Goods and Services Tax regime, as such assessee would still continue



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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:

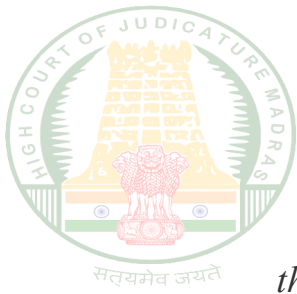
" 216. Since, no useful will be served by not allowing persons like the petitioners to revive their registration and integrate them back into the main stream, I am of the view that the impugned orders are liable to be quashed and with few safeguards.

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



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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.

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.

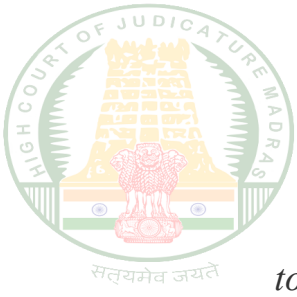
ii. It is made clear that such payment of Tax, Interest, fine / fee and etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.

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



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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.

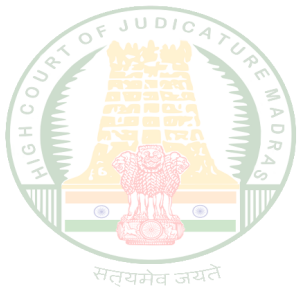
x. The above exercise shall be carried out by the respondents within a period of thirty (30) days from the date of receipt of a copy of this order."

7.This Court 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. Consequently, the connected writ miscellaneous petition is closed.

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Index: Yes/No
Internet : Yes/No
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