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W.P(MD).No.20035 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.20035 of 2022

Tvl.Lucky Mydeen Briyani
Represented by proprietorship,
M.Nabeesa Beevi

... Petitioner

Vs.

1.The Commissioner,
Madurai Division,
O/o The Commissioner of GST and Central Excise,
Madurai Division,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai-625 002.

2.The Superintendent
Madurai Rural (South)
O/o The Commissioner of GST and Central Excise,
Madurai Division,
Central Revenue Buildings,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam,
Madurai-625 002.

...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.ZA330122009946T, dated 04.01.2022 and quash the same and



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consequently direct the respondents to revoke the cancellation of petitioner's
GSTIN.33CDDPN7037C1ZV.

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For Petitioner : Mr.Veeramanikandan
For Respondents : Mr.G.Prabhu
Junior Standing Counsel

ORDER

The petitioner is a proprietor of Tvl.Lucky Mydeen Briyani served with a notice for cancellation of Registration in Reference No.ZA330122009946T, dated 04.01.2022. The petitioner engaged private accountant for the purpose of filing returns and he alone had the access to the GST portal for filing returns. During the Covid-19 Pandemic, the business shut down and further, the petitioner was suffering with ill-health. Hence, the petitioner was unable to conduct the accountant and file his returns. Thereafter, the petitioner received a show cause notice, dated 02.12.2021 by the second respondent in online for the reason that why the registration shall not be cancelled under Section 29 (2) (C) of the CGST Act, since the petitioner was failed to file the returns for continuous period of six months.

2. He further submits that only during the Month of second week of August 2022, when the private accountant accessed the GSTN, the petitioner came to know that the registration was cancelled by the second respondent vide the impugned order of cancellation of registration, dated 04.01.2022. The



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petitioner attempted to file a representation through online to revoke the cancellation of registration. The same was not accepted, since the request for revocation is not filed within the statutory limitation of 90 (30+60) days.

3. In such circumstances, the Commissioner of Commercial Taxes in his proceedings in P/35/2021-ADC (RC AND M)-CCT-CTD, dated 07.04.2021 citing the order of the Hon'ble Apex Court directed all the higher 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.

4. The learned counsel for the respondent submits that the petitioner has failed to file the returns for continuous period of six months. The show cause notice was issued on 02.12.2021 but the petitioner failed to respond to the show cause notice. After a period of one year, the petitioner attempted to upload in GSTN portal. He further submits that the petitioner has an appeal remedy before the Appellate authority and the petitioner failed to file an appeal but directly approached this Court. Hence, he prayed for dismissal of



the writ petition.

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5. Considering the submission and perusal of the materials, it is seen that the petitioner during the Covid-19 pandemic period had not filed his returns and thereafter, he had not conducted any business so that he filed only nil returns. Further this case is quite similar to the cases of the petitioners in ***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 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 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.

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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 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.

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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.

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



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of this order."

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6. 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.

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Index : Yes / No
Internet : Yes/ No
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M.NIRMAL KUMAR, J.



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