



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.6580 of 2024

Jones Diraviam

... Petitioner

versus

1.The Deputy Commissioner (GST Appeal),
Commercial Tax Buildings,
South High Ground Road,
Palaymkottai,
Tirunelveli District.

2.The Commercial Tax Officer,
Tuticorin -II,
Tirunelveli, Tamil Nadu.

... Respondents

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 relating to the impugned order of the 1st respondent in Na.Ka.No.A1/222/2024 dated 15.02.2024 and quash the same and consequently direct the 1st respondent to condone 260 days delay in filing the appeal beyond the statutory period and admit the appeal.



For Petitioner : Mr.M.Iniyavan

For Respondent : Mr.A.Baskaran
Additional Government Pleader

ORDER

The petitioner is a supply contractor and he has GST registration. The petitioner has failed to submit his returns and therefore, his GST registration was cancelled by the 2nd respondent. The petitioner has also filed an appeal before the 1st respondent, however, with a delay of 260 days.

2.According to the petitioner he was unaware of the notice issued for non-filing of the returns and further due to his inadvertent oversight he failed to submit his reply. However, the respondents have passed an order cancelling his GST registration. In view of the cancellation of registration, he is not in a position to do his business and his livelihood is affected.



3.The learned Additional Government Pleader submits that the petitioner has been issued with notice and however he has not filed any reply and he has also not filed the appeal in time.

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

5.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 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



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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 stand defeated. The petitioner deserves a chance to come back into GST



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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



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cannot be restricted by the 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



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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 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.”

6.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 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 6 production of the bill with the GST registration number.



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

7.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.



8. The petitioner is a contract supplier. 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. 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.

9. In similar circumstances, this Court, in *Suguna Cutpiece Vs. 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 petitioner out of the Goods and Service Tax regime. By applying the above ratio, this writ petition is allowed and the impugned order is set aside. The matter is remitted back to the respondents for fresh consideration. No costs.

27.03.2024

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B.PUGALENDHI, J.

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