

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2021

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P. No.15081 of 2020 and
WMP.Nos.18799, 18801 & 18797 of 2020

Ramakrishnan Mahalingam
Proprietor of M/s.Prateeksha Bharat Gas Gramia Vitrak
Elada Village, 333/1
Prateeksha Gas,
Kil Kotagiri, Kodanadu,
Kotagiri – 643 217
Tamil Nadu.

...Petitioner

Vs.

1.State Tax Officer (Circle),
Goods and Service Tax Officer,
Kotagiri.

2.Deputy Commissioner (ST),
Office of Deputy Commissioner,
G.S.T. Appeal,
Coimbatore.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to
Writ of Certiorarified Mandamus calling for the records to quash the order of the 1st

respondent dated 16.09.2019 in cancelling the GST registration of the petitioner and to consequently call for the records and quash the deficiency memo dated 05.10.2020 issued by the 2nd respondent in denying the Input Tax Credit's for the period of 2017-18 and 2018-19 and demanding the petitioner to pay the taxes mentioned therein and to further direct the 1st and 2nd respondent to revoke the cancellation of GST registration and to grant Input Tax Credit's as claimed by the petitioner in its returns against its output tax liability in accordance with the law.

For Petitioner : Mr.Karthik Ranganathan

For Respondent : Mr.ANR.Jayaprathap
Government Advocate

ORDER

Heard Mr.Karthik Ranganathan, learned counsel for the petitioner and Mr.ANR.Jayaprathap, learned Government Advocate for the respondents.

2.The challenge in this writ petition is to a deficiency memo dated 05.10.2020 issued by the 2nd respondent, the first appellate authority under the Tamil Nadu Goods and Services Tax Act, 2017 (in short 'TNGST') wherein, the appeal of the

petitioner has been rejected on the ground that the Input Tax Credit (ITC) availed for various periods was ineligible. The appellate authority has instructed the petitioner to remit the amount due in order to have the appeal admitted.

3.The petitioner was holding GST Registration Certificate issued on 02.08.2018, effective 01.07.2017. A show cause notice was issued by the first respondent assessing officer on 22.07.2019 calling upon the petitioner to show cause why the registration not be cancelled, since the petitioner had not filed returns for a continuous period of six months. The non-filing of the returns is admitted. Thereafter, the registration came to be cancelled on 16.09.2019, which is also challenged by way of the present writ petition.

4.As against the order of cancellation, the TNGST provides for an application for revocation of order of cancellation in terms of Section 30. As per Section 30 of the Act, an application may be made by an assessee whose registration is cancelled before the assessing authority and the authority, upon consideration of the same and after hearing the petitioner must take a decision on whether the registration is to be revived or the application rejected.

5. Two applications have been filed by the petitioner under Section 30, the first one rejected by an order dated 24.07.2020 referring to non-compliance of the petitioner to notice issued by the assessing officer, and the second dated 09.09.2020, rejected on 12.09.2020, referring to outstanding interest on belated payment of tax dues and for allegedly wrongful claim of ITC. As against order dated 24.09.2020, the petitioner filed an appeal before R2, who has issued the deficiency memo, challenged in this writ petition.

6. As far as the appeal is itself concerned, the petitioner has withdrawn the same and the appeal has been dismissed as withdrawn by order dated 08.04.2021 passed by R2.

7. The contention of the respondents herein that the revival of registration is conditional upon the petitioner satisfying tax dues and substantiating its claim of ITC, is misconceived. What is sought for by the petitioner is revocation/revival of registration only, and in the guise of considering the application for revocation, the authorities cannot embark upon the process of assessment.

8. An assessment would have to be made by the authority in terms of Section 73 or other applicable provision after following the procedure set out therein, and it is

only in the course thereof that the officer may consider and decide questions of leviability of tax and claim of input tax credit.

9. Thus to state that registration will not be revived since the petitioner has incorrectly availed of ITC would be putting the cart before the horse. In fact, it is seen that the petitioner has filed monthly returns as well as annual returns for the periods January 2017-18 to September 2019-20 and for financial years 2017-18 and 2018-19 and has also remitted late fee for filing of belated returns. Thus, and these being the only conditions that are to be satisfied by the petitioner for grant of revocation of registration, I am of the view that the cancellation of the registration in this case is incorrect and improper.

10. Let the first respondent pass an order reviving the registration of the petitioner forthwith. Needless to say, the respondent is at liberty to take up matters of assessment thereafter, in accordance with law.

11. Though no counter has been filed in this matter, Mr. Jayaprathap would refer to a draft counter to state that the counter only reiterates the reasoning set out in the orders rejecting the application for revocation, being non-payment of tax dues and claim of input tax credit.

12.This writ petition is allowed in the aforesaid terms. Connected miscellaneous petitions are closed. No costs.

30.04.2021

vs
Index: Yes
Speaking order

To

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Kotagiri.

2.Deputy Commissioner (ST),
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G.S.T. Appeal,
Coimbatore.



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DR. ANITA SUMANTH, J.

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