

IN THE HIGH COURT FOR THE STATE OF TELANGANA: HYDERABAD

*** * ***

WRIT PETITION No.4401 of 2024

Between:
APITCO Ltd.

Petitioner

VERSUS

The Union of India and Ors.

Respondents

ORDER PRONOUNCED ON: 28.02.2024

**THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

N.TUKARAMJI, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND**

THE HON'BLE SRI JUSTICE N. TUKARAMJI

+ WRIT PETITION No.4401 of 2024

% 28.02.2024

Between:
APITCO Ltd..

Petitioner

VERSUS

The Union of India and Ors.

Respondents

! Counsel for Petitioner(s) : Dr. S.V. Rama Krishna

^Counsel for the respondent(s) : 1) Mr. Gadi Praveen Kumar for
respondent No.1

2) Mr. Bhaskar Reddy for respondent
Nos. 2 to 4

<GIST:

> HEAD NOTE:

? Cases referred

1) W.P.(C) 9424/2023 and CM Nos.36000/2023 &36001/2023

2) 2022 SCC OnLine Mad 8452

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI
WRIT PETITION No.4401 of 2024

ORDER: *(per Hon'ble Sri Justice P.SAM KOSHY)*

The challenge in the present Writ Petition is to the order dated 18.04.2023 passed by respondent No.3/The Deputy State Tax Officer cancelling the GST registration of the petitioner. The effective date of cancellation of registration is 28.02.2019.

2. Heard Dr. S.V. Rama Krishna, learned counsel for the petitioner, Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India appearing for respondent No.1 and Mr. Bhaskar Reddy, learned Standing Counsel for Commercial Taxes appearing for the respondent Nos.2 to 4.

3. It appears that the rejection has been made primarily on the ground that the petitioner has failed to file their returns for more than six (06) months continuously.

4. The petitioner herein is a company incorporated in the year 1976 and is a Public Sector Unit (PSU) jointly promoted by A.P. State Govt., All India Financial Institutions and Public Sector Banks such as IFCI, IDBI, ICICI, APSFC, SIDBI etc. and its accounts are audited by Comptroller and Auditor General (CAG). The petitioner is a technical consultancy service organization engaged in providing

technical support services to the industry by undertaking technical, management and development consultancy services and also implements various welfare and training programmes on behalf of the Central and State Governments under different schemes across the country.

5. In addition, the petitioner is also registered with the GST Authorities and is given GST No.36AABCA7348D2ZU under the Goods and Services Tax Act, 2016 (for short, 'the Act') and regular in filing returns wherever applicable up till February, 2019. Thereafter, due to Covid pandemic, attrition of employees due to superannuation, retirement and resignations during this trouble period coupled with change of management in the year 2022, there were some missings in filing GST returns regularly on behalf of the petitioner. During the years 2018-2019 to 2021-2022, the petitioner made the following ad-hoc amounts towards CGST/SGST:

For the financial year 2018-19	-- Rs.16,90,367/-
For the financial year 2019-20	-- Rs.7,24,819/-
For the financial year 2020-21	-- nil
For the financial year 2021-22	-- <u>Rs.20,00,000/-</u>
Total amount paid	-- <u>Rs. 44,15,186/-</u>

6. However, because of the impact of Covid pandemic and the consequences that arose thereafter, the petitioner could not file required returns from time to time leading to issuance of a show cause notice on 14.01.2023. Though the petitioner had replied to the

same, however, without any further enquiry or an explanation or an opportunity of hearing, the impugned order has been straightaway passed.

7. Learned counsel for the petitioner submits that given a chance, the petitioner shall make good the default so far as non-filing of the returns are concerned and the petitioner is also ready to pay the requisite fine and penalty if any and the order of cancellation of registration accordingly be restored, or else the petitioner would be put to irreparable loss. Moreover, the cancellation of registration is not in the interest of either of the parties inasmuch as the Government is also not going to gain much.

8. Learned Standing Counsel for Commercial Taxes on the other hand contended that plain reading of the impugned order by itself is self-explanatory inasmuch as it would clearly reflect that the petitioner was issued with a show cause notice which was duly served upon and the petitioner had also replied to the same promptly. Though the petitioner had given the reply to the show cause notice, however, a default of non-furnishing of the returns for a period of six (06) months was not attended to in spite of the show cause notice being issued which has led to cancellation of the registration. As such, the petitioner is not entitled for relief that he seeks for through the present Writ Petition.

9. Having heard the contentions put forth on either side and also going through the factual details that are reflected from the pleadings itself, what is apparently visible is that the show cause notice was issued to the petitioner on 14.01.2023. The charge against the petitioner was that of not furnishing the GST returns for more than six (06) months continuously.

10. At this juncture, it is necessary to appreciate the fact that the show cause notice was that of December, 2020. Everybody knows that since March, 2020, onwards it was Covid pandemic that ripped through the entire country bringing the entire commercial and industrial establishments to a standstill or at least remaining closed for a major part of that period. The business of these establishments including that of the petitioner must have definitely been affected.

11. It is relevant at this juncture to take note of the recent decision of the High Court of Delhi in the case of **Kritika Agarwal v. Union of India and others**¹, wherein the High Court in a case of cancellation of GST registration had observed that:

“the measure of cancellation of GST must be exercised with circumspection and only in cases, where it is necessary”. This in otherwise means that the intention of the Hon’ble Delhi High Court by allowing the writ petition was that the authorities concern should take a more pragmatic approach so far as the case where GST registration is concerned and cancellation should not be

¹ W.P.(C) 9424/2023 and CM Nos.36000/2023 &36001/2023

restored in a mechanical manner or as a matter of routine. Similar decision has also been passed by Division Bench of this Court in W.P.No.36174 of 2022 *vide* order dated 20.09.2021, where the Division Bench had set-aside the order of the appellate authority and the matter had been remanded back for fresh consideration on its own merits.”

12. Likewise, there is yet another decision from the High Court of Madras in the case of **Tvl. Sastha Engineering Works, Rep by its Partner v. State Tax Officer (Circle) and Another**² wherein the High Court of Madras in paragraph Nos.4 to 7 has held as under:

“**4.** It is submitted by the learned counsel for the Petitioner that in identical circumstances, this Court, in the case of Tvl.Suguna Cutpiece Vs The Appellate Deputy Commissioner (ST) (GST) and others (W.P.Nos. 25048, 25877, 12738 of 2021 etc., batch), dated 31.01.2022, issued the following directions:

“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

² 2022 SCC OnLine Mad 8452

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.

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.”

5. The same has been consistently thereafter followed by this Court in various decisions, viz.,

a) *M/s. Maaruthi Foundations Private Limited Vs Deputy Commissioner (ST) (FAC)*, reported in 2022 (5) TMI 405;

b) *J. Jayakrishnan Vs The Additional Chief Secretary/ Commissioner of Commercial Taxes, Chennai* reported in 2022 (7) TMI 1226;

c) *TVL.Jeyalakshmi Store represented by its Proprietor, Sivanu Pandian Vs Commissioner of Commercial Taxes* reported in 2022 (7) TMI 1275 ;

d) *M/s.Pearl and Company Vs The Commissioner of Commercial Taxes* in W.P(MD)No.19127 of 2022.

6. In view of the fact that this Court has been consistently following the directions issued 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) and the Revenue/Department has also accepted the said view as evident from the fact that no appeal has been filed in any of the matters, this Court intends to follow the above order of this Court.

7. In view of the same, this Court feels that the benefit extended by this Court in the earlier orders referred to above in *Suguna Cutpiece Centre's* case cited supra, may be extended to the Petitioner.

13. Given the said factual matrix of the case as also the judicial pronouncements that are referred to in the preceding paragraphs, if the default on the part of the petitioner is only so far as non-furnishing of the returns, we are of the considered opinion that subject to the petitioner making good the default, the said GST registration of the petitioner would get restored which would enable the petitioner to carry on his business and which would also generate GST revenue to the respondent authorities as well.

14. Learned counsel for the petitioner has also undertaken to make good the necessary default so far as non-furnishing of the GST returns are concerned along with late fees and penalty that would be applicable.

15. In view of the same, the present Writ Petition stands allowed directing the petitioner to immediately appear before the respondent authorities by 12.03.2024 and upon furnishing the entire GST returns up till date which they have not yet filed along with requisite late fees and penalty if any, the respondent authorities shall forthwith restore the GST registration of the petitioner without any further scrutiny so far as the default of non-payment of GST returns till now is concerned and the same is a onetime measure. It is made clear that upon the petitioner making good the default so far as filing of the returns up till date along with late fees and penalty, the order of cancellation of GST registration of the petitioner dated 18.04.2023 would automatically get restored.

16. The Writ Petition accordingly stands allowed. However, there shall be no order as to costs. Consequently, miscellaneous petitions pending if any, shall stand closed.

P.SAM KOSHY, J

N.TUKARAMJI, J

Date: 28.02.2024

Note: LR copy to be marked: **Yes**
B/O
GSD