

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2020

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THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.15796 of 2020
and W.M.P.(MD)No.13241 of 2020

Tvl.Lourdes Matha Cashew Industries,
Represented by its Proprietor,
Jobrun Ghevarghese Varghese, aged 50 years,
S/o.Varghese,
16/80B, Vattakottai,
Manakarai Post,
Kanniyakumari District – 629 517. ... Petitioner

Vs.

- 1.The Union of India,
Represented by its
Secretary to Government,
Finance Department, Rajpath Marg,
Central Secretariat, New Delhi – 110 001.
- 2.Goods and Service Tax Network,
East Wing, 4th Floor, World Mark-1,
Aerocity, New Delhi – 110 037.
- 3.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes, Ezhilagam, Chepauk, Chennai – 600 005.
- 4.The Joint Commissioner,
Computer Systems,
Ezhilagam, Chepauk, Chennai – 600 005.
- 5.The Assistant Commissioner (ST),
Kuzhithurai Assessment Circle,
Integrated Commercial Taxes Buildings,
Kalkulam Taluk, Vilvatsagoshtam,
Kanniyakumari District – 629 802. ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents 4 and 5 to grant retrospective registration with effect from 01.07.2017 for petitioner's Registration Certificate dated 07.06.2018, having No. 33AAZPV5192P2ZD by considering its representation dated 14.09.2020 within a time frame fixed by this Court.

For Petitioner : Mr.B.Rooban
For R1 : Mr.R.Rajaraman,
Senior Panel Counsel.
For R2 : Mr.B.Vijay Karthikeyan
Senior Standing Panel Counsel.
For R3 to R5 : Mrs.J.Padmavathi,
Special Government Pleader.

ORDER

(This petition was heard through video conferencing)

This writ petition has been filed for a Mandamus seeking for a direction to direct the respondents 4 and 5 to grant retrospective registration with effect from 01.07.2017 for petitioner's Registration Certificate dated 07.06.2018 under the Tamil Nadu Goods and Service Tax Act, by considering its representation dated 14.09.2020, within a time frame to be fixed by this Court.

2.Mr.R.Rajaraman, learned Senior Panel Counsel accepts notice for the first respondent, Mr.B.Vijay Karthikeyan, learned Senior Standing

Panel Counsel accepts notice for the second respondent and Mrs.J.Padmavathi, learned Special Government Pleader accepts notice for the respondents 3 to 5. By consent of all parties, this writ petition is taken up for final disposal at the admission stage itself.

3.The case of the petitioner is that he was issued a provisional Registration Certificate, dated 26.06.2017 under the Goods and Service Act by the fifth respondent. According to him, he had take steps for migration from Tamil Nadu Value Added Tax regime to the Tamil Nadu Goods and Service Tax regime. However, he was unable to upload the details as required for migration and the process of migration was not finalized. He found out that it was partly on account of inadvertent omission/mistake of his Accounts Department in Tamil Nadu and partly due to the technical glitches caused in the computer system. According to him, he submitted a letter, dated 16.05.2018 to the fifth respondent pointing out the difficulties faced by him with regard to the migration from Tamil Nadu Value Added Tax regime to the Tamil Nadu Goods and Service Tax regime. But, according to him, there was no positive response from the Department. It is his case that he was compelled to apply a fresh application for registration, as provisional Registration Certificate issued to him earlier, got lapsed. It is his case that his fresh application was processed and valid Registration Certificate was issued by the fifth respondent under the Tamil Nadu Goods and Service Tax Act.

4. According to the petitioner, the validity of the fresh Registration Certificate issued by the fifth respondent is valid only from 01.06.2018, though the liability of the petitioner to pay tax commences from 01.07.2017. According to him, only due to technical glitches in the computer system, he was unable to upload the details from 01.07.2017 even though the provisional Registration Certificate was issued in favour of the petitioner by the fifth respondent.

5. According to the petitioner, he is having business activities in the State of Kerala also. It is his case that due to inadvertent omission/mistake of his Accounts Department in Tamil Nadu and partly on account of technical glitches caused in the computer system maintained by the fifth respondent, he was unable to avail input tax credit for the period up to 31.05.2018. According to him, he is eligible to avail input tax credit under the provisions of Section 16 of the Tamil Nadu Goods and Service Tax Act as against the element of IGST shown in the invoices raised from the State of Kerala. According to him, only due to inadvertent omission/mistake as well as on account of technical glitches in the computer system maintained by the fifth respondent, he is not in a position to file his returns, for want of valid registration certificate.

6.The petitioner has given representation, on 14.09.2020 requesting them to validate the registration from 01.07.2017 itself. In the said representation, he has also relied upon the following judgments of Hon'ble High Court of Kerala:

(i)WP(C)No.17323 of 2019 dated 29.11.2019

(ii)WP(C)No.35333 of 2019

According to him, the relief sought for in the representation, dated 14.09.2020 were granted by the Hon'ble High Court of Kerala in the aforementioned judgments. It is the case of the petitioner that till date the representation of the petitioner, dated 14.09.2020 has not been considered by the fifth respondent on merits and in accordance with law. In such circumstances, this writ petition has been filed.

7.Heard Mr.B.Rooban, learned counsel appearing for the petitioner, Mr.R.Rajaraman, learned Senior Panel Counsel appearing for the first respondent, Mr.B.Vijay Karthikeyan, learned Senior Standing Panel Counsel appearing for the second respondent and Mrs.J.Padmavathi, learned Special Government Pleader appearing for the respondents 3 to 5.

8.The learned counsel appearing for the petitioner relied upon the aforesaid judgments mentioned in the petitioner's representation, dated

14.09.2020 and submitted that in identical matters, the Commercial Tax Department has validated the registration in cases, where dealer was unable to submit his returns, though registration was given from a later date.

9.However, the learned Special Government Pleader representing fifth respondent, on instructions, would submit that the petitioner only obtained new registration and old registration was not in force when the petitioner submitted his returns. It is also submitted by her that retrospective effect cannot be given to the Registration certificate.

10.Whether at all the petitioner is entitled for a relief sought for in his representation, dated 14.09.2020 is concerned, it is for the fifth respondent to consider the same on merits and in accordance with law. The petitioner relied upon two decisions of the Hon'ble High Court of Kerala in his representation, which according to him, enables the fifth respondent to validate the petitioner's registration from 01.07.2017 itself. The grounds raised by the petitioner in his representation, will have to be considered by the respondents on merits and in accordance with law and in the light of the decisions referred to by the petitioner. No prejudice will be caused to the respondents if the representation of the petitioner is considered by them, on merits and in accordance with law.

11.For the foregoing reasons, this Court directs the fourth and fifth respondents to consider the petitioner's representation, dated 14.09.2020 seeking for validation of his registration from 01.07.2017 itself and pass final orders on merits and in accordance with law and in the light of the decisions referred to by the petitioner in his representation, dated 14.09.2020, after giving sufficient opportunity to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

12.With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

10.11.2020

Index :yes/No
Internet:yes/No
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Note: i)Issue order copy on 18.11.2020

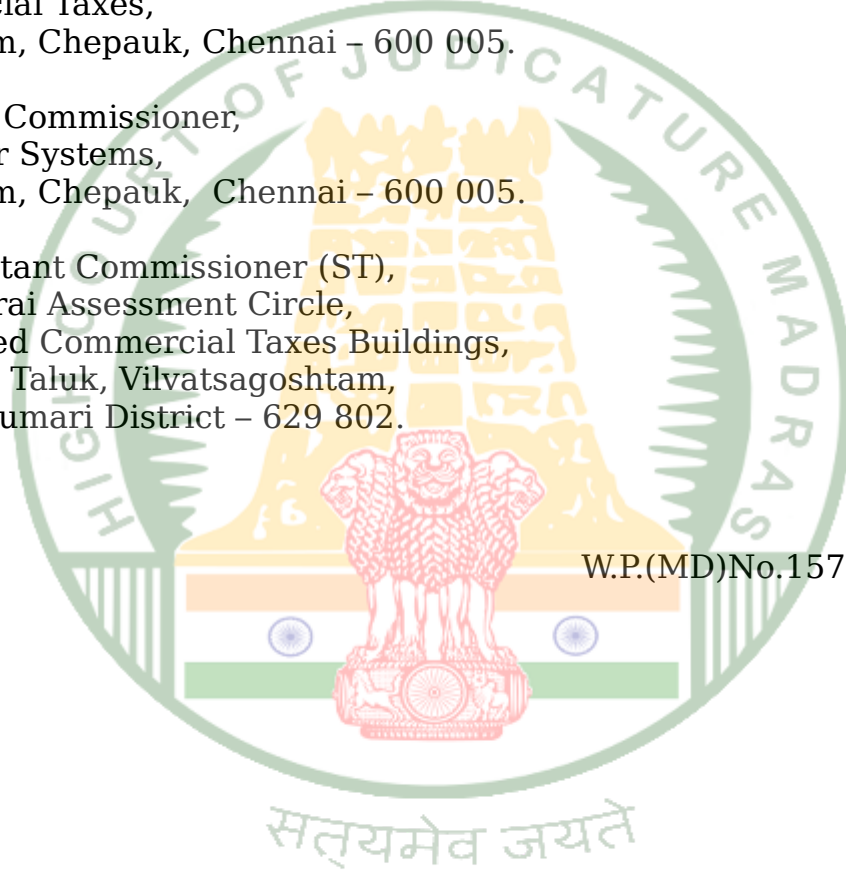
ii)In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

ABDUL QUDDHOSE,J.

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To

- 1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk, Chennai – 600 005.
- 2.The Joint Commissioner,
Computer Systems,
Ezhilagam, Chepauk, Chennai – 600 005.
- 3.The Assistant Commissioner (ST),
Kuzhithurai Assessment Circle,
Integrated Commercial Taxes Buildings,
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Kanniyakumari District – 629 802.



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