

Court No. - 5

Case :- WRIT TAX No. - 1208 of 2022

Petitioner :- M/S Ennkay Timbers And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Pragya Pandey

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Ms. Pragya Pandey, learned counsel for the petitioners and Sri Ravi Shankar Pandey, learned Standing Counsel for the State-respondents.

2. The instant Writ Tax is being entertained by this Court in view of the fact that G.S.T. Tribunal is not functional in the State of Uttar Pradesh pursuant to the Gazette notification of the Central Government bearing number CG-DL-E-14092023-248743 dated 14.09.2023.

3. By means of this writ petition, petitioners have assailed the order dated 18.09.2021 by which the registration of the petitioner's firm was cancelled and the same has been confirmed by order dated 4.8.2022 passed by respondent no.2 rejecting the appeal of the petitioner no.1.

4. Brief facts of the case are that the the petitioner no.2 is the sole proprietor of M/s Ennkay Timbers (petitioner no.1) and was allotted GSTIN No.09BZAPK7818J1Z0 under the Goods and Services Tax Act (hereinafter referred to as 'GST Act'), who was engaged in the business of timbers. Further, the petitioner no.2 could not file the GST returns for his firm for a consecutive period of six months, to which a show cause notice was issued against the petitioner firm proposing to cancel the GST registration under Section 29 (2) (c) of GST Act, to which the petitioner no.2 could not file an appropriate reply within the period specified in the show cause notice dated 04.09.2021 because the petitioner no.2 was mentally exhausted after two

losses in his family. Further, not being satisfied, the registration of petitioner's firm was cancelled on 18.09.2021 against which a Writ Tax No. 757 of 2022 was filed before this Court, which was dismissed on 27.05.2023 on the ground that the petitioner no.1 has alternative remedy of appeal under CGST/UPGST, Act, 2017. Thereafter, an appeal was filed, which was also rejected by impugned order dated 4.8.2022. Hence the present petition.

5. Learned counsel for the petitioners has submitted that the petitioner no.2 has failed to file his GST returns for a period of six consecutive months due to loss of her mother and sister because of that the petitioner no.2 got mentally and financially exhausted. She has further submitted that the petitioner's firm (petitioner no.1) had filed GSTR-01 returns from March, 2021 to June, 2021 but from July, 2021 to August, 2021 could not file the same. Similarly, the 3B returns were not filed from March, 2021 to August, 2021. She has further submitted that the petitioner no.2 does not dispute the liability of tax and is ready and willing to clear all dues along with interest but in installments, as per direction by this Hon'ble Court. She has further submitted that since the registration of the petitioner no.1 has been cancelled, the amount of tax cannot be deposited Online until and unless the registration is restored, tax along with the interest cannot be deposited.

6. In support of his claim, learned counsel for the petitioners has relied upon the judgement of Kerala High Court delivered in the case of **Pazahydom Food Ventures (P) Ltd., Vs. Superintendent Commercial Tax, CGST [WP(C).No.14275 OF 2020(H)]**, decided on **24.07.2020** and upon the judgment of **Guwahati High Court delivered** in the case of **M/s. Veteran Facility Management Services Pvt., Ltd., Vs. The Union of India & 5 others, [WP(C)/795/2022]**, decided on **15.02.2022**. He prays for allowing the writ petition.

7. *Per contra*, learned Standing Counsel has opposed the order by submitting that the petitioner no.2 has admitted for not filing of GSTR-01

and 3B returns consecutive for more than six months, therefore, the action taken against the petitioner no.1 is justified. He has further submitted that record itself reveals that the petitioner no.2 was undertaken the business activities and the said fact has not been disputed. He has further submitted that on the one hand, the petitioner no.2 was indulged in his business activities and was realising the GST from his customers and on the other hand, the same was not deposited as per the law, therefore, the registration has rightly been cancelled. He prays for dismissal of this writ petition.

8. The Court has perused the records.

9. Admittedly, it is not in dispute that the petitioner no.1 was registered under the GST Act and GSTIN No.09BZAPK7818J1Z0 was granted to it, but due to unavoidable circumstances, the mother and sister of petitioner no.2 expired after prolonged serious illness due to which, the petitioner no.2 not only suffered financially but also mentally, due to which, the petitioner no.2 could not deposit the tax as well as filed is returns consecutively for for more than six months. Further, the petitioners in para 13 themselves mentioned and shows their will to deposit the entire dues along with interest.

10. The Kerala High Court in the case of **Pazhayidom Food Ventures (supra)** has held as under:-

“On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I note that the petitioner, who is an assessee under the GST Act, is not disputing his liability to tax, or the quantum thereof, for the period in question. It only seeks an instalment facility to pay the admitted tax, together with interest thereon, in view of the financial difficulties faced by it during the Covid pandemic situation, when its business has come to a total standstill. I also note that during the pendency of this Writ Petition, the petitioner has established its bonafides by effecting a payment of Rs.4 lakhs towards the tax liability for the period 2018-2019. It is also relevant to note that, as of today, there is no demand against the petitioner for the unpaid tax amount. Under the circumstances, since the petitioner is not disputing his liability, and wishes to put a quietus to the matter, I deem it appropriate to direct the respondent to accept the belated return filed by the petitioner for the period November 2018 to March 2019,

without insisting on payment of the admitted tax declared therein. The respondents shall adjust the amount of Rs. 4 Lakhs paid by the petitioner during the pendency of this writ petition, towards the admitted tax liability, and thereafter permit him to discharge the balance tax liability, inclusive of any interest and late fee thereon, in equal successive monthly instalments commencing from 25th August 2020 and culminating on 25th March, 2021. It is made clear that if the petitioner defaults in any single instalment, he will lose the benefit of this judgment and it will be open to the respondent to proceed with recovery proceedings for realisation of the unpaid tax, interest and other amounts.

The Writ Petition is disposed as above.”

11. Similarly, the Guwahati High Court in the case of of **M/s Veteran Facility Management Services (supra)** in para 6 to 13 has held as under:

“6. A reading of paragraph 5 of the Circular dated 28.02.2015 would make it discernable that the Commissioner of GST is empowered and has the discretion of granting sanction to pay arrear of the GST in installments upto maximum of 24 (twenty four) monthly installments and the Chief Commissioners are given the jurisdiction and authority to sanction the payment of the arrears in monthly installments greater than 24 (twenty four) upto a maximum of 36 (thirty six).

7. The petitioner firm in this writ petition claims that as because the precarious financial condition it would not be possible for them to pay the entire amount due plus the interest and penalty within 36 (thirty six) installments, which is the maximum limit for the Chief commissioner and therefore, seeks to invoke the discretionary power of the Court in allowing them to pay the dues in 48 (forty eight) installments.

8. Although there may be an inherent power of the Court under [Article 226](#) of the Constitution of India to use a discretion but at the same time when it is statutorily provided by the departmental authorities that the maximum permissible installments be 36 (thirty six), we are of the view that the Court ought not to randomly extend such installments beyond 36 (thirty six) in the guise of exercising discretionary power but at the same time, we also take note that if further installments are not allowed to the petitioner firm, they would be unable to pay the tax due and it may result in a sustenance of the order of cancellation of their registration. If it is so, there would be an end of their business in the present form that they are undertaking and it would also be the end of the Department to have any tax from the petitioners in the form of the present business any further.

9. Considering the matter in its entirety, we requested Mr. S C Keyal, learned counsel to confer with the authorities in

the GST Department whether in the facts and circumstances of the present case, the permissible installments can be extended upto 48 (forty eight). The departmental authorities are fair enough to agree to such proposition. But, however, an apprehension is raised that the past conduct of the petitioner is such that it is not confidence inspiring.

10. Without taking any specific view on the aforesaid aspect and in order to provide some succor to the petitioner firm so that they can remain in the business they are presently undertaking, it is provided that the amount of Rs.2,58,30,801/- plus the interest and the penalty that may be applicable under the law be evaluated by the department and the assessed amount be determined. The said amount be equally divided by 48 and the monthly amount payable by the petitioner firm be determined and communicated to the petitioner. Upon such determination the petitioner firm shall pay the determined monthly installments within the 7th of every month.

11. As we are invoking the discretionary power, we further provide that if the petitioner firm do not comply with the requirement of paying the determined monthly installment within the 7th of every month, there shall be a periodical review by the departmental authority every month and in the event of default, the earlier order of cancellation may be revived by the department without any further reference.

12. The determination of the equal monthly installments to be paid by the petitioner firm be determined by the Assistant Commissioner, Guwahati, Division-2 on or before 28.02.2022 and in doing do, the petitioner firm may also be given a hearing and the petitioner firm shall cooperate with the authority. Upon such determination, the requirement of payment shall start from 1st of March, 2022.

13. It is needless to say that on the installments being determined and the petitioner firm continuing to pay the installments, the order of cancellation of the registration would have no effect, subject to any default if made by petitioner.”

12. In the case in hand, the petitioner, in a peculiar circumstances, the petitioner no.2 could not deposit the amount of tax but the petitioner no.2, as stated above, is ready and willing to deposit the amount of tax.

13. In view of the facts as stated above and looking to the law laid down in above referred judgments, respondent no.2 is directed to restore the registration of petitioner no.1 forthwith within a period of one week from the date of production of certified copy of this order. The petitioner no.2 is directed to deposit a sum of Rs. 6,00,000/-, after restoration of

registration within a week. Thereafter, respondent no.3 shall intimate the petitioner no.2 about the remaining outstanding amount along with interest, which shall be paid by the petitioner no.2 in six equal monthly installments.

14. The writ petition is **Allowed** accordingly. No order as to costs.

Order Date :- 11.10.2023

Pravesh Mishra/-