



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 25464 OF 2023 (T-RES)

BETWEEN:

SRI SUVARNA ENTERPRISES
(A PROPRIETORSHIP CONCERN
REPRESENTED BY ITS PROPRIETOR
SRI CHANDRA KIRAN PAICHUR NARAYANA)
AGED ABOUT 37 YEARS
NO V-76, ROOM NO.2, JALSOOR
GRAM PANCHAYATH, SULLIA TALUK
DAKSHINA KANNADA-574 239.

...PETITIONER

(BY SRI. PRADYUMNA HEJIB.,ADVOCATE)

AND:

THE SUPERINTENDENT OF CENTRAL TAX
SULLIA RANGE
MANGALORE EAST DIVISION
II FLOOR, AMAR COMPLEX
NEAR KSRTC BUS STAND
PUTTUR-574 201.

...RESPONDENT

(BY SRI. JEEVAN.J.NEERALGI.,ADVOCATE)

THIS W.P IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER BEARING REFERENCE NO.ZA290123036946D DTD 10.01.2023 ANNEXURE-C PASSED BY THE RESPONDENT AND TO DIRECT HIM TO REVOKE THE CANCELLATION OF THE GST REGISTRATION OF THE PETITIONER.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:





ORDER

In this petition, petitioner seeks the following reliefs:

“WHEREFORE, it is respectfully prayed that this Hon’ble Court be pleased to :

(a) Issue a writ in the nature of Mandamus or any other writ to issue a writ/order/direction in the nature of Mandamus or any other writ or writs as deemed fit by this Hon’ble Court to direct to quash the impugned order bearing Reference No.ZA290123036946D dated 10.01.2023[Annexure-C] passed by the Respondent and to direct him to revoke the cancellation of the GST registration of the Petitioner.

(b)Grant such other order or direction as deemed as deemed fit in the facts and circumstances of the case in the interest of justice.”

2. Heard learned counsel for the petitioner and learned counsel for the respondent and perused the material on record.

3. In addition to reiterating the various contentions urged in the memorandum of petition and referring to the material on record, learned counsel for the petitioner submits that due to bonafide reasons, unavoidable circumstances and sufficient cause and on account of e-mail ID of the petitioner being inoperative and non-functional, the petitioner could not submit the GST returns for a



continuous period of six months, as a result of which, the respondents issued a Show Cause Notice dated 09.12.2022, which culminated in the impugned order at Annexure–C dated 10.01.2023 thereby canceling GST registration of the petitioner. Aggrieved by the said order of cancellation of GST registration, petitioner filed a statutory appeal under Section 29 of the CGST Act, 2017 before the Appellate Authority, which was dismissed as barred by limitation since the same was filed beyond the prescribed period of four months. In this context, learned counsel for the petitioner submits that the petitioner is ready to deposit pending tax amount along with interest subject to availment of Input Tax Credit and as such, it is necessary that the impugned order passed by the original authority canceling registration of GST is set aside and matter remitted back to respondent for consideration of the request for revocation of GST cancellation of the petitioner by providing an opportunity in favour of the petitioner.

4. Per contra, learned counsel for the respondent would support the impugned order and submits that there is no merit in the petition and that the same is liable to be dismissed.



5. A perusal of the material on record will indicate that it is no doubt true that the appeal preferred by the petitioner before the Appellate Authority was dismissed as barred by limitation. In this context, a perusal of the order of the Appellate Authority dated 12.10.2023 will indicate that the merits of the claim of the petitioner for revocation of the GST cancellation has not been examined by the Appellate Authority, which has proceeded to summarily dismiss the appeal as barred by limitation. It is needless to state that if an appeal is dismissed as barred by limitation, it is no appeal in the eye of law and dismissal of the appeal as barred by limitation would not result in merger of the order of the original authority with the order of the Appellate Authority. In other words, if an appeal is dismissed as barred by limitation, the order of the original authority would still remain and would not merge with the order-in-appeal and order of the original authority would be capable of being challenged under Article 226 of the Constitution of India subject to all exceptions in law.

6. Under these circumstances, merely because appeal preferred by the petitioner was dismissed by the Appellate Authority vide impugned order at Annexure – D dated 31.08.2023,



it cannot be said that this Court is denuded of its power or jurisdiction to examine the claim of the petitioner under Article 226 of the Constitution of India or to examine the legality, validity and correctness of the order of the original authority under Article 226 of the Constitution of India.

7. The next point for consideration is whether any indulgence is to be shown to the petitioner in the facts and circumstances of the instant case so as to enable the petitioner to seek revocation of the GST cancellation in its favour. In this context, it is relevant to state that the petitioner has specifically contended that its inability and omission to file its returns within the prescribed / stipulated period was due to bonafide reasons, unavoidable circumstances and sufficient cause. Under these circumstances, in the light of the specific assertion on the part of the petitioner that petitioner would pay the entire outstanding tax dues together with interest subject to availment of Input Tax Credit and in the peculiar / special facts and circumstances of the instant case, I deem it just and appropriate to exercise my jurisdiction under Article 226 of the Constitution of India and set aside the impugned Order-in-original at Annexure – C dated 10.01.2023 and



remit the matter back to the respondent for consideration of the claim of the petitioner for revocation of GST cancellation after providing sufficient and reasonable opportunity to the petitioner.

8. In the result, I pass the following:

ORDER

- (i) The petition is hereby ***allowed***.
- (ii) The impugned order at Annexure – C dated 10.01.2023 passed by the respondent, is hereby set aside.
- (iii) Matter is remitted back to the respondent for consideration of the claim of the petitioner for revocation of GST cancellation of the petitioner – Society.
- (iv) Liberty is reserved in favour of the petitioner to file pleadings, documents, etc., to the respondent, who shall provide sufficient and reasonable opportunity to the petitioner and proceed further in accordance with law.
- (v) Petitioner undertakes to appear before the respondent on 13.05.2023.



(vi) Immediately upon petitioner appears before the respondent and filing pleadings, documents, etc., the respondent, shall hear and pass appropriate orders on the claim of the petitioner within a period of three months from 13.05.2023.

**Sd/-
JUDGE**

DHA
List No.: 1 SI No.: 6