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Basavaraj Malgi vs Assistant Commissioner

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Court : Karnataka

Decided On : Feb-28-2025

Judge : S.G.Pandit

Appeal No. : WP/5198/2025

Appellant : Basavaraj Malgi

Respondent : Assistant Commissioner

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2025 BEFORE THE HON'BLE MR JUSTICE S.G.PANDIT WRIT PETITION NO. 5198 OF 2025 (T-RES) BETWEEN:

1. BASAVARAJ MALGI,

S/O MALLIKARJUNA MALGI, AGED ABOUT 48 YEARS, PROPRIETOR, VAISHNAVI VENTURES (EARLIER AT) GROUND FLOOR, NO. 35 BYTARAYANAPURA, SAHAKARANAGAR BENGALURU URBAN, KARNATAKA - 560 092, GSTN.

29ANBPM9965G1ZF, PROPRIETORSHIP CONCERNED. CURRENTLY C/O RAVIKUMAR, PRINCIPAL, VIVEKANANDA COLONY, OPP. MEDICAL COLLEGE, KOPPAL, KARNATAKA - 583 231. Digitally signed by MARIGANGAIAH PREMAKUMARI PETITIONER Location: HIGH COURT OF KARNATAKA (BY SMT. VEENA J. KAMATH, ADVOCATE) AND:

1. ASSISTANT COMMISSIONER,

LVO, LGSTO 151, OFFICE OF DGST - 05 "B" BLOCK, 5TH FLOOR, VTK-2, RAJENDRA NAGAR, 80 FT ROAD, KORAMANGALA, BANGALORE - 47 RESPONDENT (BY SRI. K. HEMA KUMAR, AGA) -2- THIS W.P. IS FILED PRAYING TO QUASH THE IMPUGNED

ORDER DATED 16.10.2022 IN ANNX-A BEARING REF.NO.

ZA291022057420Z CANCELLING THE PETITIONERS GST REGISTRATION WITH EFFECT FROM 30.06.2021 BY ISSUING A WRIT OF CERTIORARI AND DIRECT THE RESPONDENT TO RESTORE THE PETITIONERS GST REGISTRATION BY ISSUING A WRIT OF MANDAMUS AND ETC., THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER: CORAM: HON'BLE MR JUSTICE S.G.PANDIT

ORAL ORDER

Heard Smt.Veena.J.Kamath, learned counsel for the petitioner and Sri. K.Hemakumar, learned Additional Government Advocate for the respondent. Perused the writ petition papers.

2. Learned counsel for the petitioner submits that the petitioner is before this Court under Article 226 of the Constitution of India, questioning the correctness and legality

of the order dated 16.10.2022 (Annexure-A) cancelling petitioners GST registration. It is further submitted that the petitioner was issued with show-cause

notice dated 02.12.2021 calling upon the petitioner as to why his GST registration should not be cancelled. Further, learned counsel submits that -3- while passing the cancellation order, there is no consideration of the objection filed by the petitioner. Learned counsel submits that the impugned order is bereft of reasons and it is not a speaking order. Learned counsel would submit that the petitioner is ready and willing to file returns and also pay tax dues with interest and penalty. Thus, it is prayed for allowing the writ petition.

3. Per contra, learned AGA Sri. K.Hemakumar would

submit that the petitioner is before this Court nearly after two years from the date of cancellation of GST registration and he submits that there is no bonafide in the writ petition. Further, learned AGA would submit that there is no reason assigned for approaching this Court belatedly and he also submits that the reply said to have been submitted to the show-cause notice is

also not placed on record. Thus, he prays for passing an appropriate order.

4. Having heard the learned counsel for the parties

and on perusal of the entire writ petition papers, I am of the view that the petitioner ought to be given an opportunity to file returns and to pay tax dues along with interest and penalty. -4-

5. The petitioner was issued with show-cause notice

dated 02.12.2021, calling upon the petitioner to explain as to why his GST registration should not be cancelled for non-filing of returns for continuous period of six months. Petitioner submitted that he has filed objection to the show-cause notice

but the same has not been placed on record. However, a perusal of the impugned order of cancellation indicates filing of objection by the petitioner to the show-cause notice. But the respondent-Authority while cancelling the GST registration of the petitioner under impugned order dated 16.10.2022 has failed to consider the reply of the petitioner. When a reply is submitted, the Authorities considering the

same, at least should assign reasons as to why explanation submitted by the

Assessee would not be acceptable. Moreover, the petitioner has come forward to file returns and to pay the tax dues with interest and penalty. Hence, I pass the following:

ORDER

(a) Writ petition is allowed; -5-

(b) Annexure-A, order bearing No.ZA291022057420Z dated 16.10.2022 cancelling GST registration of the petitioner is quashed;

(c) Four weeks time granted to the petitioner to file returns and also to pay tax dues along with interest and penalty. If the petitioner fails to pay the tax dues and returns as directed above, the cancellation

order would revive after four weeks.

(d) Registration of the GST be restored forthwith. SD/- (S.G.PANDIT) JUDGE SMJ List No.: 1 Sl No.: 22

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