



Madras HC: Quashes orders cancelling registration citing 'legitimate trade' & 'GST objective', however, allows imposing penalty

Madras HC allows a batch of writ petitions challenging order of cancellation of GST registration for not filing returns for a continuous period of 6 months; In clear terms, states that, notwithstanding the fact that the Petitioners have "shown utter disregard to the provisions of the Acts and have failed to take advantage of the amnesty scheme given to revive their registration", this Court is inclined to quash the impugned orders and grant consequential reliefs subject to terms; Finding that no useful purpose will be served by not allowing persons like the Petitioners to revive their registration and integrate them back into the main stream, clarifies, "While exercising jurisdiction, under Article 226 of the Constitution, the powers of the Court to do justice i.e., what is good for the society, can neither be restricted nor curtailed"; Thereby observes that, by passing order in favour of the petitioners, "Court is effectuating the object under the GST enactment of levying and collecting just tax from every assessee who either supplies goods or service" as "Legitimate Trade and Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance"; However, allows the authorities acting under the Act to "impose penalty with the gravity of lapses committed by these petitioners by issuing notice", further adds that, "If required, the Central Government and the State Government may also suitably amend the Rules to levy penalty so that it acts as a deterrent on others from adopting casual approach"; Additionally, directs the Petitioners to file their returns for the period prior to the cancellation of registration with a caveat that such payment of Tax, Interest, fine / fee and etc. shall not be allowed to be made or adjusted from ITC which may be lying unutilized or unclaimed in the hands of these petitioners; On perusal of the provisions of CGST Act as well as the CGST Rules and the Notifications issued from time to time in view of the COVID-19 pandemic, determines that based on the recommendation of the GST Council, the Government gave a fresh opportunity to those persons whose right to file an application under Section 30(1) of the Act and the remedy under proviso to the Section 30(1) of the Act had expired between March 20, 2020 to August 31, 2021 by extending the period upto September 30, 2021, however, none of the Assessess took advantage of the extension of time; Reiterating that position of law as enunciated by SC in Singh Enterprises "applies to the facts of these cases", holds that appeals were rightly rejected correctly by lower authorities as such appeals were filed beyond the period for condonation of the delay as per the above decision and "no fault can be attributed to their action"; Nonetheless quoting that "there are overwhelming reasons for granting reliefs to these petitioners to restore their registration", remarks, "It should be however remembered that the provisions of the Goods and Services Tax Act, 2017 cannot be interpreted in such a manner, so as to



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debar an assessee, either from obtaining registration or reviving the lapsed/cancelled registration as such an interpretation would be not only contrary to the Article 19(1)(g) of the Constitution of India but also in violation of Article 14 and Article 21 of the Constitution of India”; Moreover, states, it will also not mean that the Assessees will not do business i.e., of either supplying goods or service in the unorganized sector, they will still do their business, may be ‘surreptitiously and clandestinely’ thus, by not allowing to revive their registration is to de-recognize a whole lot of entrepreneurs and to not to collect GST at all from them; Elucidating that there are adequate safeguards under the GST enactments which can also be pressed against the Assessees, outlines that “By not allowing the petitioners to revive their registration is to de-recognise a whole lot of entrepreneurs” which will “only strain the system.....”.