

GAHC010013452023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/365/2023

AMESH BASUMATARY
S/O- SRI KABENDRA BASUMATARY, PROPRIETOR OF M/S BASUMATARY E
HERO, HAVING ITS OFFICE AT BEJGURI, SOMKONG, DHEMAJI, ASSAM,
PIN- 787061

VERSUS

THE UNION OF INDIA AND 3 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF FINANCE
DEPTT OF REVENUE, NORTH BLOCK, NEW DELHI

2:THE COMMISSIONER CGST AND CENTRAL EXCISE
GST BHAWAN
KEDAR ROAD
GUWAHATI- 781001
ASSAM

3:THE ADDITIONAL COMMISSIONER (APPEALS) CGST
CENTRAL EXCISE AND CUSTOMS
GST BHAWAN
KEDAR ROAD
GUWAHATI- 781001
ASSAM

4:THE SUPERINTENDENT OF CENTRAL TAXES
DHEMAJI-2
NORTH LAKHIMPUR RANGE
TEZPUR DIVISION
ASSA

Advocate for the Petitioner : MR A NATH

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 30.01.2023

Heard Dr. A. Todi, learned counsel for the petitioner. Also heard Mr. S. C. Keyal, learned standing counsel for the GST.

2. This writ petition is filed impugning the order dated 11.11.2021 passed by the respondent No. 4, namely, the Superintendent of Central Taxes, Dhemaaji- 2, North Lakhimpur Range, Tezpur Division, Assam whereby the GST registration of the petitioner was cancelled in terms of the provisions of Section 29 of the Central Goods and Services Tax Act, 2017. Thereafter, the petitioner preferred an appeal against the impugned order of cancellation dated 11.11.2021 under Section 107 of the Central Goods and Services Tax Act, 2017. However, the said appeal also came to be dismissed as being time barred by the Appellate Authority, namely, respondent No. 3 vide order dated 16.01.2023, which is also impugned in the writ petition.

3. The petitioner is a proprietor of a business and is executing works contract as well as supplies under the name and style M/S Basumatary E-Hero, having its Office at Bejguri, Somkong, Dhemaaji, Assam. According to the petitioner, the order of cancellation of the GST registration was passed without any notice to the petitioner. Subsequently, the petitioner came to be informed that a notice to show cause was issued to the petitioner in Form GST REG-17/31 vide Reference No. ZA181021000929T dated 01.10.2021. The said show cause was purportedly issued under Section 29(2) of the Central Goods and Services Tax Act, 2017 read with Rules 22(1) and Rules 21A(2A) of the Central Goods and Services Tax Act, 2017.

However, vide the said notice, the GST registration of the petitioner was suspended on 01.10.2021 itself, namely, the date of issuance of the show cause notice. The petitioner is aggrieved that there was no personal notice served upon the petitioner prior to suspension and cancellation of the GST registration rather a notice was simply uploaded in the website of the department. According to the petitioner, such actions of the respondent authority are in complete violation of the Rules of natural justice as well as the provisions of the GST Act and the Rules. The learned counsel for the petitioner submits that this action of the respondent authorities is punitive in nature and has the effect of putting the business of the petitioner to a complete halt as without the GST registration he is unable to continue with his business as it is only source of his livelihood.

4. It is submitted by the learned counsel for petitioner that pursuant to the cancellation of the GST registration, he had preferred an appeal under Section 107 of the CGST Act, 2017 before the Appellate Authority, namely, the respondent No. 3 herein. However the same also came to be dismissed as being barred by limitation. It is the submission of the learned counsel for the petitioner that since there was no personal notice served on the petitioner he came to be aware subsequently that his GST registration has been suspended and that a notice to show cause was issued by respondent No. 4. However, the said notice was put up only on the website of the department and, therefore, by the time the petitioner became aware of the suspension of his GST registration and subsequent cancellation of GST registration, the period of limitation as prescribed under the Act had already elapsed for filing an application for revocation of the cancellation of GST registration under Section 30 of the CGST Act, 2017. An appeal filed before the Appellate Authority was also dismissed on the ground of limitation. It is, therefore, submitted that there being no other alternative remedy available to the petitioner, the present writ petition has been filed seeking appropriate writ,

direction and orders from this Court to the respondent authorities. It is further submitted that the petitioner had already deposited the statutory dues.

5. When the matter came up before this Court on 25.01.2023, the learned standing counsel representing the GST Department was permitted to obtain the required instructions in the matter. Today, when the matter is called up, the learned standing counsel has fairly submitted that there are orders passed by the other Co-ordinate Benches in respect of the cancellation of GST registration and, therefore, this writ petition can also be disposed of in terms of similar directions.

6. The learned counsels for the parties have been heard. Pleadings on record have also been duly perused. The Apex Court by the order dated 10.01.2022 passed in Miscellaneous Application No. 21/2022 in Miscellaneous Application No. 665/2021 in Suo Motu Writ Petition (C) No. 3/2020 with Miscellaneous Application No. 29/2022 in Miscellaneous Application No. 665/2021 in Suo Motu Writ Petition (C) No. 3/2020, in view of the COVID-19 Pandemic situation which had severely affected the world including the country, had extended the period of limitation. In terms of the order dated 10.01.2022 of the Apex Court, the period from 15.03.2020 till 28.02.2022 stood excluded for the purposes of limitation as may be prescribed under any General or Special Laws in respect of Judicial or Quasi Judicial proceedings and the balance period of limitation remaining as on 03.10.2021, if any shall become available w.e.f. 01.03.2022.

7. From the pleadings, it is seen that the order for cancellation of GST registration of the petitioner was issued on 11.11.2021 and against which the appeal under Section 107 was filed on 19.07.2022. It is apparent that the order for cancellation of GST registration was passed on 11.11.2021 and the order for revocation of cancellation was required to be filed within 30(thirty) days therefrom as per the provisions of the CGST Act, 2017. Both these periods fall within the

period mentioned in the Apex Court's order dated 10.01.2022. Accordingly, it was incumbent on the Appellate Authority to take note of the Apex Court's order regarding Cognizance for extension of limitation and thereafter pass appropriate orders. Upon perusal of the order of the Appellate Authority, it is seen that there is no reference to the Apex Court's orders. There is no finding that as to whether according to the department, the assessee was excluded from the benefit of the order passed by the Apex Court or whether the appellant was entitled to the benefit of the order passed by the Apex Court in Miscellaneous Application No. 21/2022. As such, it is apparent that the authorities did not take into account the orders passed by the Apex Court regarding cognizance for extension of limitation and had accordingly failed to pass appropriate orders seeking revocation of cancellation of GST registration, in the appeal preferred by the petitioner against such order. There is another aspect required to be noticed. If the petitioner is not included within the GST regime, then any statutory dues that may be required to be deposited by the petitioner may not be deposited and which will not be in the interest of the revenue. Therefore, in order that the petitioner is required to comply with his statutory obligations of payment of taxes under the GST regime, it would be necessary for the departmental authorities to re-consider the prayer of the petitioner for revocation of his cancellation of GST registration keeping in view the orders passed by the Apex Court regarding extension of limitation. A writ Court is empowered to condone the delay of any statutory or quasi judicial authority. Such power is inherent in a Writ Court [Commissioner of Income Tax-12 –Vs- Pheroza Framroze and Company – (2017) 11 SCC 730]. Accordingly, the impugned order dated 11.11.2021 and the order of the Appellate Authority dated 16.01.2023 are hereby interfered with and set aside. The matter is remanded back to the departmental authority to re-consider his prayer for revocation of cancellation of GST registration.

8. It is directed that the respondent No. 4, namely, the Superintendent of Central Taxes, Dhemaji- 2, North Lakhimpur Range, Tezpur Division, Assam will intimate the petitioner the total outstanding statutory dues standing in the name of the petitioner till the date on which his GST registration was cancelled. Upon such intimation, if any such outstanding statutory dues under GST is required to be paid the same shall be deposited by the petitioner without fail. Upon such payment of statutory dues under the GST by the petitioner, the cancellation of the GST registration in respect of the writ petitioner shall be revoked by the respondent authorities. Upon such revocation, the petitioner will continue to deposit his statutory dues, if any, periodically as mandated by the CGST Act, 2017.

9. With this direction, the writ petition stands disposed of in terms of the above. No cost.

JUDGE

Comparing Assistant