

GAHC010272162022



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

Case No. : WP(C)/394/2023

DIPANKAR DAIMARY
S/O- NABIN DAIMARY, R/O- DHOBANIPARA, CHOTTOMATIA, P.O, P.S AND
DIST- GOALPARA, ASSAM, PIN- 783126

VERSUS

UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, DEPTT OF FINANCE

2:THE PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICE
TAX
GST BHAWAN
KEDAR ROAD
GUWAHATI- 781001
ASSAM

3:THE JOINT COMMISSIONER (APPEALS)
CENTRAL GOODS AND SERVICE TAX
GST BHAWAN
KEDAR ROAD
GUWAHATI- 781001
ASSAM

4:THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GOALPARA
ASSAM

5:THE SUPERINTENDENT
CENTRAL GOODS AND SERVICE TAX
GOALPARA-2
ASSA

Advocate for the Petitioner : MR. A K GUPTA

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

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 30.01.2023

Heard Mr. R. S. Mishra, 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 03.08.2022 passed by the respondent No. 5, namely, the Superintendent, Central Goods and Service Tax, Goalpara- 2, 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.

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 Dipankar Daimary" having its Office at Dhobanipara, Chottomatia, P.O., P.S. & District Goalpara, Assam. It is submitted that because of COVID-19 Pandemic, the business of the petitioner suffered severely and the petitioner sustained huge financial losses. It is submitted that the Tax Consultant whose services were availed of by the petitioner had also left the job and the petitioner was unaware of the online system regarding GST compliances, therefore, the statutory returns could not be filed on due dates. It is submitted that the petitioner was served with a show cause notice being Show Cause Notice bearing reference No. ZA1806220052960 dated 07.06.2022 whereby the petitioner was asked to furnish a reply to the said show cause notice within a period of seven working days from the date of receipt of the same. It is submitted that pursuant to the show cause notice, the GST registration of the petitioner was

cancelled vide Order No. ZA180822002225W dated 03.08.2022.

4. It is submitted by the petitioner that subsequently, after improvement of COVID-19 Pandemic situation, the petitioner on the advice of a new Tax Consultant deposited the statutory GST dues upto July, 2022. After filing of such returns, the petitioner attempted to file an application for revocation of the cancellation. However, since it was not filed within the prescribed period, the same could not be filed. An appeal was also preferred by the petitioner under Section 107 against the cancellation of its GST registration. The said appeal however is pending disposal before the Appellate Authority. It is further submitted that in filing the appeal a delay of 2(two) days had occurred. It is submitted by the petitioner that since the GST returns to the extent permitted by the portal has already been deposited, the cancellation of the GST registration is not justified as the same was on account of non-filing of GST returns due to the hardship faced by the petitioner because of COVID-19 Pandemic situations. The GST returns upto July, 2022 now having been filed, there is no necessity to disallow the revocation of the cancellation of GST registration in favour of the petitioner by the respondent authorities. 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 his only source of his livelihood.

5. When the matter came up before this Court on 27.01.2023, the learned standing counsel representing the GST Department was permitted to obtain instructions. 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 and the pleadings on record have been duly perused. The orders passed by the Co-ordinate Bench of this Court in WP(C) No. 6232/2022 and WP(C) No. 6429/2022 have also been perused. In these two writ petitions, this Court had directed restoration of GST registration after deposit of all pending dues.

7. Under Rule 23(1) of the GST Rules of 2017 it is provided that no application for revocation shall be filed unless such returns are furnished and any amount due as tax in terms of such returns has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns. The reasons for default on the part of the petitioner to submit its periodical returns as required under GST Act and the Rules, as pleaded in the present proceedings, are attributed to the financial losses suffered by the petitioner because of the COVID-19 Pandemic situation. It is the further case of the petitioner that against the order of cancellation of its GST registration, the petitioner had preferred an appeal before the Appellate Authority under Section 107 of the GST Act, 2017. It is submitted that the said appeal in terms of the provisions of Section 107 ought to have been filed within a period of 3(three) months from the date of the order against which the appeal is preferred, namely, the order of cancellation. According to the petitioner, the appeal is time barred by two days beyond the condonable period. However, no such order has been passed by the Appellate Authority in the appeal which is pending before the Appellate Authority.

8. The purpose of limitation being prescribed in a statute is two fold, namely, to ensure compliance of the statutory provisions by the persons on whom the provisions of the statute are applicable and further to ensure that no third party rights which may have been created in the meantime are permitted to be non-suited/unsettled. Under the scheme of GST Act and Rules, the non-revocation of cancellation of GST registration is likely to prejudice the assessee alone. In

cancellation of such GST registration for the reasons mentioned under the Section, it cannot be said that any third party rights are created against the assessee. No prejudice is caused to any other person, if the GST registration of the petitioner/assessee is revoked. No prejudice is caused to the revenue. Rather as discussed above, it will be in the interest of the revenue to permit the revocation of a cancellation of GST registration of an assessee like the petitioner so that it facilitates collection of revenue as mandated under the GST Regime.

9. In the present case since an appeal is already preferred and is pending before the Appellate Authority, it is deemed appropriate not to remand the matter back to the concerned authority, namely, respondent No. 5 i.e. the Superintendent, Central Goods and Service Tax, Goalpara- 2, Assam for revocation of the cancellation of GST Registration. The Appellate Authority is fairly empowered to pass adequate and appropriate orders for revocation of the cancellation of GST registration upon being satisfied on the facts and circumstances that may be presented before the Appellate Authority. 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, in view of the above discussions and on the facts and circumstances of this case, this Court is of the considered view that the appeal pending before the Appellate Authority should be heard on merits by passing appropriate orders regarding the revocation of cancellation of GST. It is, therefore, ordered that the pending appeal be disposed of by the Appellate Authority on merits rather than dismissing or rejecting the same on the ground of limitation and requiring the petitioner to approach this Court once again by filing a writ.

10. It is directed that the respondent No. 5, namely, the Superintendent, Central Goods and Service Tax, Goalpara- 2, 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 deposit of statutory dues under the GST Regime by the petitioner, the Appellate Authority will proceed to hear the appeal preferred on merit and presently stated to be pending before the Appellate Authority and thereupon pass appropriate orders after giving adequate opportunity to the petitioner of being heard. In view of the discussions above, the Appellate Authority will decide the appeal on merits after condonation of any delay.

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

JUDGE

Comparing Assistant