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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.1267 of 2022

(Through Video Conferencing)

Varadarajulu Srinivasan,
S/o Late Varadarajulu

... Petitioner

Vs.

The Deputy Commissioner (ST),
GST Appeal, Chennai-I,
3rd Floor, C.T.Annexe Building,
No.1, Greams Road,
Chennai - 600 006.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent herein pertaining to the impugned order passed by the respondent in order bearing RC.No.1230/2021/A1 dated 13.12.2021 and to quash the same, consequently to direct the respondent to entertain the appeal filed by the petitioner.

For Petitioner : Mr.V.Meenakshi Sundaram

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

Mr.V.Prashanth Kiran, learned Government Advocate takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned order dated 13.12.2021 passed by the respondent dismissing the appeal filed by the petitioner beyond the period prescribed under Section 107 of the respective GST Act, 2017. Yesterday i.e., on 31.01.2022, a batch of writ petitions in W.P.No.14241 of 2020, relating to the same issue were disposed by this Court subject to certain conditions under similar circumstances. The same relief is to be granted to the petitioner as the petitioner also has similar grievances in those writ petitions.

3. The operative portion of the order reads as under:-

<https://hcservices.ecourts.gov.in/hcservices/>

150. I have heard the learned Senior Counsel and



respective counsel for the petitioners in the respective Writ Petitions and the learned Special Government Pleader, learned Senior Standing Counsel for the respective respondents.

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151. There are broadly four categories of cases. Some of the petitioners have directly challenged the order of cancellation of GST registration passed under Section 29 of the respective GST Acts. All these petitioners had a remedy to file an application under Section 30 of the respective GST Acts for revocation of cancellation of the registration in time subject to the conditions prescribed therein or to file an appeal before the Appellate Authority under Section 107 of the respective GST Acts.

152. As far as the second category of cases in W.P.No.14241 of 2020 is concerned, the petitioner has exercised the above option by filing application under Section 30 of the respective GST Acts. However, the Original Authority has rejected the same on the ground that the petitioner has not filed any reply to the notice dated 26.08.2020.

153. The third and fourth categories of cases are similar. After the orders of cancellation of GST registration were passed, these petitioners, instead of choosing to file an application under Section 30 of the respective GST Acts for revocation of cancellation of registration in time, filed appeals before the Appellate Commissioner under Section 107 of the respective GST Acts belatedly beyond the period prescribed for condonation of limitation.

154. Some of the appeals filed against the order of cancellation of GST registration were rejected without numbering, while, some of the appeals were numbered and rejected on the ground that the time prescribed for appeal had existed. Appeals filed by these petitioners were dismissed as these appeals were filed not only beyond the statutory period of limitation prescribed under Section 107 of the respective GST Acts but also beyond the condonable period.

155. The law on the limitation has been well settled by the Hon'ble Supreme Court. In this connection, a reference is invited to the decision of the Hon'ble Supreme Court in M/s.Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others, (2008) 3 SCC 70, wherein, it has been held that statutory appeal that filed beyond the statutory period for condonation of delay under Section 35 of the Central Excise Act, 1944 cannot be condoned. This position of law applies to the facts of these cases.



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156. As original or as appellate authority exercising power under the respective enactments, quasi judicial officers were bound by the provisions of the Act and the limitation under it, they have acted in accordance with law. They cannot look beyond the limitations prescribed under provisions of the Act. Therefore, no fault can be attributed to their action.

157. Under these circumstances, no fault can be attributed to the impugned orders passed by the Appellate Commissioner inasmuch as they cannot exercise jurisdiction beyond the provisions of the Act and are bound to Act in accordance of the provisions of the Act. At the same time, I find there are overwhelming reasons for granting reliefs to these petitioners to restore their registration.

158. Before proceeding to deal further with the issue, it will be useful to refer the legal changes brought to the tax regime with the enactments of respective Goods and Services Tax Act. When GST came into force with effect from 01.07.2017, it was found that there was overlapping of the jurisdiction by the officers functioning under the Central Goods and Services Tax Act, 2017 and respective State/Union Goods and Services Tax Act, 2017. This was reconciled by the Central Government by issuing Circular No.1/2017, dated 20.09.2017. Relevant portion of Circular No.1/2017, dated 20.09.2017 is reproduced below:-

Based on the decisions taken in the 9th Meeting of the GST Council held on 16 January, 2017 and 21st Meeting of the GST Council held on 9 September, 2017, the following criteria should be followed for the division of taxpayer base between the Centre and the States to ensure single interface:

- i. Of the total number of taxpayers below Rs. 1.5 crore turnover, all administrative control over 90% of the taxpayers shall vest with the State tax administration and 10% with the Central tax administration;
- ii. In respect of the total number of taxpayers above Rs. 1.5 crore turnover, all administrative control shall be divided equally in the ratio of 50% each for the Central and the State tax administration;
- iii. The division of taxpayers in each State shall be done by computer at the State



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level based on stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed;

2. Further, the broad guidelines for the purposes of computation of "Turnover" as approved by the GST Implementation Committee in its meeting held on 31 August and 1 September 2017 and subsequently by the GST Council in its 21st Meeting held on 9 September 2017 are as follows:

- i. For taxpayers registered only under VAT, the total annual State turnover under VAT (including inter-State sales, exports and exempt goods) shall be taken as the basis for division;
- ii. For taxpayers registered under both VAT and Central Excise, the annual State turnover under VAT shall be taken as the basis for division as State-level Central Excise turnover is already included in it;
- iii. For taxpayers registered only under Central Excise (and not under VAT), the total annual turnover declared in Central Excise returns shall be taken as the basis for division;
- iv. For tax payers registered only under Service Tax in a State on a stand-alone basis, the annual turnover of the Services declared in the Service Tax returns shall be taken as the basis for division;
- v. For taxpayers registered only under Service Tax having centralized registration, the annual all-India turnover of the Services declared in the Service Tax returns shall be taken as the basis for division.
- vi. For taxpayers registered under both VAT and Service Tax, the total non-overlapping turnover (total of VAT and Service Tax, excluding any turnover which is included in both) shall be calculated and used as the basis for division. The Service Tax turnover shall be on the basis of clauses (iv) and (v) as the case may be.

3. The State Level Committees Commercial Taxes of respective comprising Chief Commissioner/Commissioner States and



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22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Explanation.--For the purposes of this section,--

(i) the expression "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;



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job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;

(iii) the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution.

164. As per Section 22(2) of the Central Goods and Services Tax Act, 2017, every person who, on the day immediately preceding the appointed day, was registered or held a license under an existing law, shall be liable to be registered under the Act with effect from the appointed day.

165. Section 25 of the respective GST enactment contemplates the procedure for registration. Section 25 of the CGST Act, 2017 reads as under:

25. (1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Explanation.—Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be

Prescribed.



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(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 in order to be eligible for grant of registration:

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

(8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1),--



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(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner, shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period.

166. Section 26 also deals with a situation for grant of deemed registration where registration number of unique identity number has been issued or rejected under the State /Union Territory Goods and Service Tax Acts, 2017.

167. As far as cancellation or suspension of registration is concerned, Section 29 of the respective GST enactments deals with the same. Rule 22 of the respective GST Rules, 2017 implements the provisions of Section 29 of the GST enactment by prescribing procedure of cancellation. Section 29 of the respective GST enactment and Rule 22 of the respective GST Rules, 2017 are reproduced as under:-



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Section 29 of Central Goods and Services Tax Act 2017 - Cancellation of Registration	Rule 22 of Central Goods and Services Rules, 2017 - Cancellation of registration
(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,- the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or there is any change in the constitution of the business; or the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24. (2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,- a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or	(1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled. (2) The reply to the show cause notice issued under sub-rule (1) shall be furnished in FORM REG-18 within the period specified in the said sub-rule. (3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application



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Section 29 of Central Goods and Services Tax Act 2017 - Cancellation of Registration	Rule 22 of Central Goods and Services Rules, 2017 - Cancellation of registration
registration has been obtained by means of fraud, wilful misstatement or suppression of facts: Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard. (3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation. (4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act. (5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:	submitted under [sub-rule (1) of] 16 rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29. (4) Where the reply furnished under sub-rule (2) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG -20: [Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment



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Section 29 of Central Goods and Services Tax Act 2017 - Cancellation of Registration	Rule 22 of Central Goods and Services Rules, 2017 - Cancellation of registration
Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher (6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.	of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20] 17 (5) The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

168. Sub Section (2) to Section 29 deals with a situation where, a proper officer may cancel the registration of a person from such date, including a retrospective date, as he may deem such.

169. All the cases under consideration fall under situation under Sub Clause (2)(c) i.e "where a registered person other than the person specified in Clause (b) has failed to furnish returns for a continuous period of 6 months".

170. All these petitioners were issued with a proper notice as is contemplated under the aforesaid provision. The orders were also passed after giving petitioners sufficient opportunity of being heard. Majority of the petitioners failed to respond notices issued by the respondent State Tax Officer proposing the cancellation of the registration of the respective petitioners.

171. One of the options available noticee whose registration is cancelled, is to approach the same authority for revocation of cancellation of the registration in the manner prescribed within 30 days from the date of service of cancellation of registration.



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174. Considering the hardship faced by the assesses, the GST Council in its 33rd Meeting held on 24.02.2019 took a decision. Pursuant to aforesaid decision, the Central Government, on recommendations of the GST Council, in exercise of power conferred under Section 172 of the Central Goods and Services Tax Act, 2017, inserted a proviso to Section 30(1) of the respective GST enactments vide Order No.5/2019-GST, Central Board of Indirect Taxes and Customs, dated 23.04.2019. Thus, Proviso to Section 30(1) of the Act read as under:-

“Provided that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 31.03.2019, shall be allowed to file application for revocation of cancellation of the registration not later than 22.07.2019.”

175. This was a novel and an unconventional method adopted to amend the Act. It was contrary to the well established procedure under the Constitution and Law for amending a statute. The above amendment was a stop gap arrangement. As per the aforesaid proviso which was inserted to Section 30(1) of the Act, wherever cancellation orders had been passed upto 31.03.2019 and application for revocation was not filed within thirty (30) days under Sub-Section 1 to Section 30, an option was given to file an application for revocation of cancellation of the registration not later than 22.07.2019.

176. Implementing requirement of section 30 of the GST enactments, Rule 23 of the GST Rules, 2017 has been prescribed. Section 30 of the GST enactments and Rule 22 of the GST Rules 2017 are reproduced below:-



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Section 30 of the GST Act	Rule 22 of the GST Rules, 2017
(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order. (2) The proper officer may, in the manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application: Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard. (3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.	(1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled. (2) The reply to the show cause notice issued under sub-rule (1) shall be furnished in FORM REG-18 within the period specified in the said sub-rule. (3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted under [sub-rule (1) of] 16 rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.



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Section 30 of the GST Act	Rule 22 of the GST Rules, 2017
	(4) Where the reply furnished under sub-rule (2) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG -20: [Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20] 17 (5) The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

177. An alternate remedy is also available in the order of cancellation by way of appeal under Section 107 of the respective GST enactments which option has been exercised by some of the writ petitioners but beyond the period of limitation.

178. A reading of Section 29 of the Act respective GST enactments also makes it clear that cancellation of registration under the aforesaid section does not affect the liability of a person to pay tax and other dues under the Act or discharge any obligation under the said Act and the rules made under for any period prior to the date of cancellation, whether or not such tax and other dues are determined before or after the date of cancellation. They also make it clear that cancellation of registration under anyone of the other GST enactments shall be deemed to be cancellation of registration under the other GST enactments.



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179. None of the petitioners are coming within the limitation prescribed under Section 30 of the respective GST enactments except the petitioner in W.P.No.14241 of 2020 whose registration was cancelled vide order dated 13.11.2019. The said petitioner alone filed an application on 26.08.2020 before the Assistant Commissioner, the respondent in the said writ petitioner.

180. However, the respondent rejected the said application simply stating that the petitioner had not filed any reply to the Show Cause Notice dated 26.08.2020. A reading of the said Show Cause Notice dated 26.08.2020 merely states that the petitioner was requested to provide the details of interest paid in DRC-03 and reversal of ineligible ITC with interest, if any for the period under cancellation.

181. Appeals of the petitioners in W.P.Nos.23374, 20945, 20722, 25146, 25147, 25156, 21237, 26190, 26187 & 14508 of 2021 who opted to file appeals, were beyond the period for condoning the limitation under Section 107 of the Act. They were rightly rejected at the preliminary stage for appeals filed beyond the period of

limitation cannot be entertained in view of the decision of the Hon'ble Supreme Court in M/s.Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others, (2008) 3 SCC 70

182. Similarly, the appeals of the petitioners in W.P.Nos.25048, 17237, 25877, 25118, 24967, 12683, 12685 & 26026 of 2021 and in W.P.Nos.507, 126 & 128 of 2022 were also rightly rejected after they were numbered. Their appeals were also rightly rejected correctly as such appeals were filed beyond the period for condonation of the delay as per the above decision.

183. The petitioners in W.P.Nos.25678, 21315, 23374, 20945, 20722, 24967, 21237 & 26026 of 2021 and W.P.No.507 of 2022 whose registration had already been cancelled and who had an opportunity to file an application under the above proviso also failed to avail the above opportunity.

184. Nationwide, lockdown was imposed on 24.08.2020 due to the outbreak of SARS Covid-19 Pandemic. Under these circumstances, Government, rose to the occasion based on the recommendation of the GST Council and gave



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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 20.03.2020 to 29.06.2020 by extending the period upto 30.06.2020 vide Notification No.35/2020 - Central Tax, Central Board of Indirect Taxes and Customs, dated 03.04.2020.

185. This Notification was issued in the exercise of power conferred under Section 168A of the Central Goods and Services Tax Act, 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017 and Section 21 of the Union Territory Goods and Services Tax Act, 2017. This did not address the case of the above petitioners.

186. However, on 25.06.2020, the Central Government on the recommendations of the Council, in the exercise of power conferred under Section 172 of the Central Goods and Services Tax Act, 2017, issued the Central Goods and Services Tax (Removal of Difficulties) Order, 2020 vide Order No.01/2020-Central Tax, Central Board of Indirect Taxes and Customs, dated 25.06.2020. Relevant portion of the said Notification reads as under:-

1. Short title.- This Order may be called the Central Goods and Services Tax (Removal of Difficulties) Order, 2020.-

2. For the removal of difficulties, it is hereby clarified that for the purpose of calculating the period of thirty days for filing application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act for those registered persons who were served notice under clause (b) or clause (c) of sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and where cancellation order was passed up to 12th June, 2020, the later of the following dates shall be considered:-

- a) Date of service of the said cancellation order; or
- b) 31st day of August, 2020.

187. The amnesty in the above Government Order pertains to cases where orders were passed upto 12.06.2020. This was the first opportunity given to /the petitioners in W.P.Nos.25048, 12738, 17237, 25877, 25026, 25146, 25147, 25156, 12683, 12685, 25705, 26190, 26187, 14241 & 14508 of 2021 and in W.P.Nos.126 & 128 of 2022 and the second chance for others to revive their registration.



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188. The time for filing appropriate application for revoking the cancellation of registration was extended either from date of service of the said cancellation order or 31.08.2020 which was later.

189. Thus, all these petitioners whose registration had been cancelled prior to 12.06.2020 were given a fresh opportunity to file an application for revocation of cancellation of registration in terms of the Central Goods and Services Tax (Removal of Difficulties) Order, 2020 vide Order No.01/2020-Central Tax, Central Board of Indirect Taxes and Customs, dated 25.06.2020. However, none of the petitioners opted to exercise the privilege.

190. Mirroring the above Notification, G.O. (Ms). No.102, Commercial Taxes and Registration (B1) Department, dated 26.06.2020 was issued by the Government of Tamil Nadu. However, none of the petitioners opted perhaps on account of the fact that the whole world was reeling under the grip of the 2nd wave of Covid.

191. Later, proviso was substituted by Section 122 of the Finance Act, 2020 which came into force from 01.01.2021 which reads as under:-

"Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,-

- (a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;
- (b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a)."

192. By Notification No.92/2020-Central Tax, dated 22.12.2020, the Central Government appointed the 1st day of January, 2021 as the date on which the provisions of Section 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the Act shall come into force. Thus, Section 30 of the GST Acts, came into force with effect from 1st day of January, 2021. The said Notification reads as under:-

Government of India
Ministry of Finance

(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No 92/2020-Central Tax



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New Delhi, the 22nd December, 2020

S.O. (E).- In exercise of the powers conferred by sub-section (2) of section 1 of the Finance Act, 2020 (12 of 2020) (hereinafter referred to as the said Act), the Central Government hereby appoints the 1st day of January, 2021, as the date on which the provisions of sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the said Act shall come into force.

[F.No. CBEC-20/06/04/2020-GST]

193. Parallel amendments were made to Rule 23 of the respective GST Rules and FORM GST REG-21 was amended vide Notification No.15/2021-Central Tax, Central Board of Indirect Taxes and Customs, dated 18.05.2021. Rule 23 (Revocation of Cancellation of Registration) of the respective GST Rules reads as under:-

Rule 23 - Revocation of Cancellation of Registration

1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration [or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub-section (1) of section 30,] at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, 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.

[Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said



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person within a period of thirty days from the date of order of revocation of cancellation of registration.

Provided also that where the registration has been cancelled with retrospective effect the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.]

2) (a) Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant.

(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in FORM GST REG-05, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in FORM GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in FORM GST REG-24.

Upon receipt of the information or clarification in FORM GST REG-24, the proper officer shall proceed to dispose of the application in the manner specified in sub-rule (2) within a period of thirty days from the date of the receipt of such information or clarification from the applicant.

194. The above amendment however did not address



cancelled after 31.03.2019 and before the above amendment to the Act as Rules with effect from 01.01.2021.

195. Thus, rest of the petitioners in W.P.Nos.25048, 12738, 17237, 25877, 25026, 25146, 25147, 25156, 12683, 12685, 25705, 26190, 26187, 14241 & 14508 of 2021 and in W.P.Nos.126 & 128 of 2022 also had no opportunity to file an application under the proviso to Section 30(1) of the Act.

196. These petitioners had only one option to file an application within a period of 30 days from the date of service of the order of cancellation of registration under Section 30(1) of the Act which had expired long back.

197. Still later, in view of the prevailing situation, Notification No.34/2021 - Central Tax, Central Board of Indirect Taxes and Customs, dated 29.08.2021 was issued by the Central Government once again on the recommendation of the GST Council. Notification No.34/2021 - Central Tax, Central Board of Indirect Taxes and Customs, dated 29.08.2021 which reads as under:-

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Indirect Taxes and Customs

Notification No. 34/2021 - Central Tax

New Delhi, the 29th August, 2021

G.S.R.....(E).- In partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 235(E), dated the 3rd April, 2020 and No. 14/2021-Central Tax, dated the 1st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 310(E), dated the 1st May, 2021, in exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and



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section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby notifies that where a registration has been cancelled under clause (b) or (c) of sub-section (2) of section 29 of the said Act and the time limit for making an application of revocation of cancellation of registration under sub-section (1) of section 30 of the said Act falls during the period from the 1st day of March, 2020 to 31st day of August, 2021, the time limit for making such application shall be extended upto the 30th day of September, 2021.

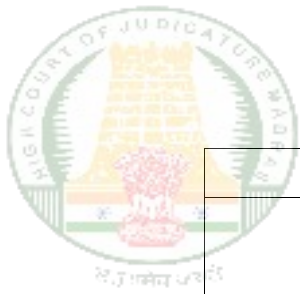
[F. No. CBIC-20006/24/2021-GST]

198. The Central Government in the above Notification took a decision to extend the time limit upto 30.09.2021 for the persons like petitioners. However, this was applicable to those registration which had been cancelled and time limit for filing application for revocation of cancellation of registration had expired during the period commencing from the 1st day of March, 2020 to 31st day of August, 2021. Thus, the time limit for making such application stood extended upto the 30th day of September, 2021.

199. In the light of the above Notification, the Principal Commissioner has also issued clarification vide Circular No.158/14/2021-GST, Central Board of Indirect Taxes and Customs, dated 06.09.2021, while, tracing out the history, in paragraph Nos.3 and 4, it has been clarified as follows:-

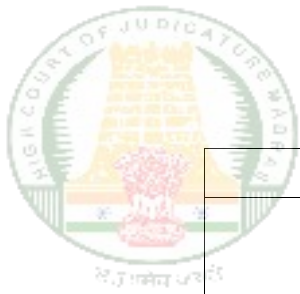


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Paragraph No.3	Paragraph No.4
In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification. iv. application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority- In such cases, appellate authorities shall take the cognizance of the said notification for extension of timelines while deciding the appeal. v. application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer- In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.	further extension of time by Joint Commissioner/ Additional Commissioner/ Commissioner. (b) Where the time period of 60 days (and not 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Commissioner, on being satisfied, as per proviso to sub-section (1) of section 30 of the CGST Act (c) Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Joint/ Additional Commissioner and another 30 days by the Commissioner,



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Paragraph No.3	Paragraph No.4
	on being satisfied, as per proviso to sub-section (1) of section 30 of the CGST Act.

200. None of the petitioners took advantage of the extension of time granted in the above Notification for revocation of cancellation of registration. Instead, some of them have filed appeals before the Appellate authority.

201. By Circular No.157/13/2021-GST, the Central Board of Indirect Taxes and Customs, GST Policy Wing, dated 20.07.2021, it was classified as follows:-

4. On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorised as follows:-

- a) Proceedings that need to be initiated or compliances that need to be done by the taxpayers:-

These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself. Various orders of the Hon'ble Supreme Court would not apply to the said proceedings/ compliances on part of the tax payers.

- b) Quasi-Judicial proceedings by tax authorities:-

The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc.

Similarly, appeals which are filed and are pending, can continue to be heard and disposed off and the same will be governed by those extensions of time granted by the statutes or notifications, if any.

- c) Appeals by taxpayers/ tax authorities against any quasi-judicial order:-



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Wherever any appeal is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

202. Meanwhile, the Hon'ble Supreme Court taking note of the hardship faced by the litigants had also extended the limitation by its orders dated 23.03.2020, 08.04.2021, 27.04.2021 & 23.09.2021 in Recognizance of Extension of Limitation Vs. xxxx, in Miscellaneous Application No.665/2021 in SMW(C) No.3/2020.

203. In its order dated 23.09.2021 in the above case, 2021 SCC OnLine SC 947, the Hon'ble Supreme Court held as under:-

Therefore, we dispose of the M.A. No. 665 of 2021 with the following directions:-

- I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.
- II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.
- III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the



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Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

IV. The Government of India shall amend the guidelines for containment zones, to state.

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

204. This Court, by its order dated 22.09.2021 in Tvl.Sunpenta Mining Service Private Limited Vs. The Assistant Commissioner (ST), Salem, in W.P.Nos.20083 and 20086 of 2021, and order dated 01.10.2021, in Suresh Trading Corporation Vs. The Asst. Commissioner (Circle) of SGST, Coimbatore II, in W.P.No.21109 of 2021, granted time for filing fresh application for revocation of the cancellation of registration.

205. Though the Clarifications and Notifications have been issued in a staggered manner by rising to the occasions to facilitate the industries to come back to the GST fold, gap however still continued to haunt these petitioners under the statute. The cases of the petitioners are now beyond the clarifications and relaxation referred to supra.

206. 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 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.

207. A reading of Notification No.52/2020 - Central Tax, Central Board of Indirect Taxes and Customs, dated 24.06.2020, further indicates that returns could be filed belatedly on payment of late fee and waivers were also granted. Relevant portion of the said Notification reads as under:-



212. May be, organised companies who comply with the requirement of GST enactments may not give business with these petitioners. However, by keeping the petitioners out of the bounds of GST law, purpose of the Act will not be achieved. It will also not mean that the petitioners will not do business ie., of either supplying goods or service in the unorganised sector. They will still do their buisness, may be surreptitiously and clandestinely.

214. By not allowing the petitioners to revive their registration is to de-recognise a whole lot of entrepreneurs and to not to collect GST at all from them.

216. Since, no useful will be served by not allowing persons like the petitioners to revive their registration and integrate them back into the main stream, I am of the view that the impugned orders are liable to be quashed and with few safeguards.

218. Further, the Government requires tax to meet its expenditure. By not bringing these petitioners within the GST fold, unintended privilege may be



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conferred on these petitioners unfairly to not to pay GST should they end supplying goods and/or services without registration. For example, a person renting out an immovable property will continue to supply such service irrespective of registration or not.

219. Therefore, if such a person is not allowed to revive the registration, the GST will not be paid, unless of course, the recipient is liable to pay tax on reverse charge basis. Otherwise, also there will be no payment of value added tax. The ultimate goal under the GST regime will stand defeated. Therefore, these petitioners deserve a right to come back into the GST fold and carry on their trade and business in a legitimate manner.

220. The provisions of the GST Enactments and the Rules made there under read with various clarifications issued by the Central Government pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear, intention is to only facilitate and not to debar and de-recognised assesses from coming back into the GST fold.

221. 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. This power under Article 226 can be exercised to effectuate the rule of law.

222. Therefore, power of this Court under Article 226 of the Constitution of India is being exercised cautiously in favour of the petitioners as this power is conceived to serve the ends of law and not to transgress them.

223. In Mafatlal Industries Ltd. Vs. Union of India, (1997) 5 SCC 536, in Paragraph No.77, the Hon'ble Supreme Court observed that "So far as the jurisdiction of the High Court under Article 226 – or for that matter, the jurisdiction of this Court under Article 32 – is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the Act. Even while acting in exercise of the said



constitutional power, the High Court cannot ignore the law nor can it override it.

224. 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 with grant consequential reliefs subject to terms.

225. The provisions of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of the defect in the scheme of the GST enactments. The right to carry on trade or profession also cannot be curtailed. Only reasonable restriction can be imposed. To deny such rights would militate against their rights under Article 14, read with Article 19 (1)(g) and Article 21 of the Constitution of India.

226. As original or as appellate authority exercising power under the respective enactments, quasi judicial officers were bound by the provisions of the Act and the limitation under it, they have acted in accordance with law. They cannot look beyond the limitations prescribed under provisions of the Act. Therefore, no fault can be attributed to their action.

227. This is a fit case for exercising the power under Article 226 of the Constitution of India in favour of the petitioners by quashing the impugned orders and to grant consequential relief to the petitioners. By doing so, the Court is effectuating the object under the GST enactment of levying and collecting just tax from every assessee who either supplies goods or service. Legitimate Trade and Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance. Therefore, the impugned orders deserve to be quashed.

228. These petitioners deserve a chance and therefore should be allowed to revive their registration so that they can proceed to regularize the defaults. The authorities acting under the Act may impose penalty with the gravity of lapses committed by these petitioners by issuing notice. If required, the Central Government and the Government may also suitably amend the Rules



to levy penalty so that it acts as a deterrent on others from adopting casual approach.

229. In the light of the above discussion, these Writ Petitions are allowed subject to the following conditions:-

- i. The petitioners are directed to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of forty five (45) days from the date of receipt of a copy of this order, if it has not been already paid.
- ii. It is made clear that such payment of Tax, Interest, fine / fee and etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.
- iii. If any Input Tax Credit has remained utilized, it shall not be utilised until it is scrutinized and approved by an appropriate or a competent officer of the Department.
- iv. Only such approved Input Tax Credit shall be allowed for being utilized thereafter for discharging future tax liability under the Act and Rule.
- v. The petitioners shall also pay GST and file the returns for the period subsequent to the cancellation of the registration by declaring the correct value of supplies and payment of GST shall also be in cash.
- vi. If any Input Tax Credit was earned, it shall be allowed to be utilised only after scrutinising and approving by the respondents or any other competent authority.
- vii. The respondents may also impose such restrictions / limitation on petitioners as may be warranted to ensure that there is no undue passing of Input Tax Credit pending such exercise and to ensure that there is no violation or an attempt to do bill trading by taking advantage of this order.
- viii. On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.



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- ix. The respondents shall take suitable steps by instructing GST Network, New Delhi to make suitable changes in the architecture of the GST Web portal to allow these petitioners to file their returns and to pay the tax/penalty/fine.
- x. The above exercise shall be carried out by the respondents within a period of thirty (30) days from the date of receipt of a copy of this order.
- xi. No cost.
- Consequently, connected Miscellaneous Petitions are closed."

4. This Writ Petition stands disposed of with the above observations. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

The Deputy Commissioner (ST),
GST Appeal, Chennai-I,
3rd Floor, C.T. Annexe Building,
No.1, Greaves Road,
Chennai - 600 006.

+1cc to Special Government Pleader (Taxes) SR.No.6623
(21/03/2022)

W.P.No.1267 of 2022

SSN(CO)
A.SK(08/03/2022)