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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.14879, 26088, 18017, 25637, 25666, 25950, 26653, 27033, 27189, 27759, 28151, 30227, 27552, & 30081 of 2022 and W.P.Nos.4522, 4686 & 4693 of 2020 & W.P.Nos.19334, 25964, 26608, 26623, 26717, 27381, 27768, 27816, 27854, 28133, 28206, 28415, 28600, 29113, 29120, 29172, 29438, 29745, 29755, 30046, 30075, 30108, 30241, 30279, 30356, 30144 & 30283 of 2022

WMP Nos.14082, 25158, 17339, 17340, 24630, 24633, 24684, 25707, 25709, 26253, 27051, 29658, 29659, 26800, 29499 & 29501 of 2022 WMP.Nos.5365, 5369, 5537, 5541, 5544 & 5547 of 2020 & WMP.Nos.18606, 18608, 25661, 25674, 25776, 26589, 26591, 27059, 27060, 27148, 27420, 27499, 27500, 27887, 28410, 28413, 28399, 28401, 28456, 28771, 28773, 29140, 29157, 29489, 29491, 29537, 29538, 29669, 29671, 29710, 29711, 29716 & 29718 of 2022

WP.No.14879 of 2022:

Mr.Pandidorai Sethupathi Raja ... Petitioner

Vs

The Superintendent of Central Tax,
Nungambakkam Zone IV, Chennai Central,
Range 1, Guindy MHU Complex,
692, Anna Salai, Nandanam,
Chennai 600 035. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order Reference Number ZA3311190207012 dated

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06.11.2019 passed by the Respondent, quash the same and direct the Respondent to pass orders after considering the returns filed by the Petitioner and submissions made by the Petitioner, without insisting for late fee.

Case Nos.	For Petitioners	For Respondents
WP.Nos.14879 & 27759 of 2022	Mr.T.R.Ramesh	Mr.Pramod Kumar Chopda, Senior Standing Counsel
WP.No.26088 of 2022	Mr.Ramanathan For Mr.K.Soundara Rajan	Mr.Mohanamurali, Senior Panel Counsel
WP.No.18017 of 2022	Mr.D.Vijayakumar	Mrs.Hema Muralikrishnan, Senior Standing Counsel
WP.No.25637 of 2022	No Appearance	Mrs.Hema Muralikrishnan, Senior Standing Counsel
WP.Nos.25666 & 27552 of 2022	Mr.K.M.Malarmannan	Mrs.Hema Muralikrishnan, Senior Standing Counsel
WP.No.25950 of 2022	Mr.B.Raveendran	Mr.T.Ramesh Kutty, Senior Standing Counsel
WP.No.26653 of 2022	Mr.M.R.Jothimanian	Mr.Sai Srujan Tayi, Senior Panel Counsel
WP.No.27033 of 2022	No Appearance	Mr.Sai Srujan Tayi, Senior Panel Counsel
WP.No.27189 of 2022	Mr.Ramanathan For Mr.R.Senniappan	Mr.Pramod Kumar Chopda, Senior Standing Counsel
WP.No.28151 of 2022	Mr.A.Ganapatheeswaran	Mr.Sai Srujan Tayi, Senior Panel Counsel
WP.No.30227 of 2022	Mr.S.Ramanan	Mr.Sai Srujan Tayi, Senior Panel Counsel
WP.No.30081 of 2022	Mr.N.Murali	Mrs.Hema Muralikrishnan, Senior Standing Counsel
W.P.No.4522 of 2020	Mr.Adithiya Reddy	Mr.TNC.Kaushik Additional Government Pleader
W.P.No.30356	Mr.P.Muthamizh	Mr.V.Prashanth Kiran

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of 2022	Selvakumar	Government Advocate
W.P.No.30144 of 2022	Mr.P.Suresh Babu	Ms.Amirtha Dinakaran Government Advocate
W.P.Nos.4686 and 4693 of 2020	Ms.Sri Harini for Mr.Adithiya Reddy	Mr.TNC.Kaushik Additional Government Pleader
W.P.No.19334 of 2022	Mr.S.Ramanan	Mr.V.Prashanth Kiran Government Advocate
W.P.No.25964 of 2022	Mr.S.Shunmuga Raja	Mr.TNC.Kaushik Additional Government Pleader
W.P.No.26608 of 2022	Mr.B.Raveendran	Mr.V.Prashanth Kiran Government Advocate
W.P.No.26623 of 2022	Mr.Murugesh Kasivel	Mr.C.Harsha Raj Additional Government Pleader
W.P.No.26717 of 2022	Mr.B.Raveendran	Mr.C.Harsha Raj Additional Government Pleader
W.P.No.27381 of 2022	No appearance	Mr.V.Prashanth Kiran Government Advocate
W.P.No.27768 of 2022	Mr.C.Thiagarajan	Mr.V.Prashanth Kiran Government Advocate
W.P.No.27816 of 2022	Mr.B.Raveendran	Mr.TNC.Kaushik Additional Government Pleader
W.P.No.27854 of 2022	Mr.B.Raveendran	Mr.C.Harsha Raj Additional Government Pleader
W.P.No.28133 of 2022	Mr.G.Saravanabhavan	Mr.TNC.Kaushik Additional Government Pleader
W.P.No.28206 of 2022	Mr.R.Thamaraiselvan	Mr.TNC.Kaushik Additional Government Pleader
W.P.No.28415 of 2022	Mr.R.Sivakumar	Mr.C.Harsha Raj Additional Government Pleader
W.P.No.28600 of 2022	Mr.P.Sivagaminathan	Mr.TNC.Kaushik Additional Government Pleader

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W.P.No.29113 of 2022	Mr.N.Murali	Mr.V.Prashanth Kiran Government Advocate
W.P.No.29172 of 2022	Mr.S.Rajasekar	Mr.TNC.Kaushik Additional Government Pleader
W.P.No.29120 of 2022	Mr.N.Murali	Mr.C.Harsha Raj Additional Government Pleader
W.P.No.29438 of 2022	Mr.N.Murali	Mr.TNC.Kaushik Additional Government Pleader
W.P.No.29745 of 2022	Mr.Anandh.S	Mr.TNC.Kaushik Additional Government Pleader
W.P.No.29755 of 2022	Mr.J.Prasannakumar	Mr.TNC.Kaushik Additional Government Pleader
W.P.No.30046 of 2022	Mr.P.Suresh Babu	Mr.V.Prashanth Kiran Government Advocate
W.P.No.30075 of 2022	No appearance	Mr.C.Harsha Raj Additional Government Pleader
W.P.No.30108 of 2022	Mr.N.Murali	Mr.TNC.Kaushik Additional Government Pleader
W.P.No.30241 of 2022	Mr.N.Murali	Mr.C.Harsha Raj Additional Government Pleader
W.P.Nos.30279 & 30283 of 2022	Mr.N.Murali	Mr.V.Prashanth Kiran Government Advocate

COMMON ORDER

This order, passed in a batch of 44 writ petitions is a sequel to several earlier orders passed in other batches of writ petitions wherein the cause of action is similar/identical to that in the present writ petitions. All petitioners challenge either orders passed by the Central/State Commercial Tax Authorities

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under the provisions of the Central Goods and Services Tax Act, 2017 or Tamil Nadu Goods and Services Tax Act, 2017 (CGST/TNGST) or orders of the appellate authorities rejecting appeals filed by them challenging orders cancelling registration on the ground that appeals have been filed belatedly.

2. Benches of this Court have earlier taken a view that, as a matter of leniency, similarly, though not equally placed petitioners, must be permitted to have the benefit of restoration of cancellation upon the imposition of certain conditions. However, the saga continues and as a matter of fact, writ petitions are being filed continuously even thereafter.

3. I had, in *M.Mallika Mahal vs. The Commissioner of Central GST,* (WP.Nos.10663 of 2022 and batch order dated 17.08.2022) taken the view, substantially similar to that taken by a learned Single Judge of this Court in WP.Nos.25048 of 2021 and batch dated 31.01.2022, to the effect that the petitioners may be granted the benefit of the Judgment of the Supreme Court in *In Re: Cognizance for extension of limitation,* Suo Motu Writ Petition (C) No. 3 of 2020 wherein the Hon'ble Supreme Court, taking note of the difficulties posed by the pandemic had extended the limitation for filing of statutory appeal/statutory and revisional remedies from time to time.

4. The last of the extensions was on 28.02.2022 and had extended the time for availing of appellate/revisional remedies by a period of 90 days. This period expired on 29.05.2022. In such circumstances, this Court endorses, and

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will accede to the submission of learned Standing Counsel for the Central and State GST Departments to the effect that the benefit of restoration of registration granted by this Court cannot be indefinitely available to the petitioners. The Central GST Authorities have filed a counter dated Nil, November, 2022 to aforesaid effect, and the same has been adopted by the State GST Authorities in their counter dated 16.11.2022.

5. It is a settled position that where statutory revisional/appellate remedies set out a certain limitation for filing of the remedy concerned, the authorities under the statute cannot traverse beyond the prescribed period. The question as to whether the High Court, in exercise of jurisdiction under Article 226 of the Constitution will do so, has been deliberated by the Hon'ble Supreme and High Courts and the position obtaining in this regard is, as a norm, in the negative.

6. However, jurisdiction under Article 226 is wide and empowers the Court to do substantial justice, over and beyond the ken of a statutory authority. Exceptions may be thus be carved out from the norm. Courts have thus proceeded to examine the facts and circumstances leading to the delay in availing the statutory remedy. If, in the opinion of the Court, the reasons set out for the delay are well founded, discretion may well be exercised in favour of the assessee concerned, and the delay condoned.

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7. This position has been reiterated by the Hon'ble Supreme Court in the case of *Assistant Commissioner (CT) Vs. Glaxo Smith Kline Consumer Health Care Limited,* [C.A.No.2413 of 2020 dated 06.05.2020]. I have, in *Keshav Ply N Laminates Vs. The Assistant Commissioner (ST),*W.P.Nos.15679 of 2020 dated 03.03.2021, where assessments under the commercial tax statues were assailed, had occasion to consider and decide the same issue and have stated thus:

> *10. Courts have, pan India, been taking differing stands with regard to the legal proposition as to whether Writ Petitions challenging orders of assessment where the concerned Statute provides for the remedy of appeal and sets out fixed time frames for filing of appeal and condonation of delay if any, in filing of the same, may be entertained.*
>
> *11. One school of thought is that no Writ Petition may be entertained in the above circumstances, as the period of limitation fixed by Statute is sans any flexibility and rigid, constituting an absolute bar.*
>
> *12. Yet another school of thought is that the power vested in a Constitutional Court under Article 226 of the Constitution of India is wide and Courts can consider the circumstances that have led to delay in challenging orders of assessment, even beyond the periods of limitation prescribed under statute.*
>
> *13. The trigger for the present discussion is the recent judgment of the Supreme Court in the case of Assistant Commissioner (Ct) LTU vs. M/s.Glaxo Smith Kline Consumer Health Care Limited [(2020 (36) GSTL 305 (SC)], wherein this issue arose. In that case, the decision of the High Court at Telangana and Andhra Pradesh was challenged and the issue framed was whether the High Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, ought to have entertained a challenge to the assessment order, seeing as the*

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statutory remedy of appeal against that order stood foreclosed by the law of limitation. The petitioner in that case had, for the period 2013-14, suffered assessment dated 21.06.2017 as against which a belated statutory appeal had been filed that was dismissed on 25.10.2018 as being barred by limitation and also since sufficient cause had not been made out for condonation of the delay.

14. A writ petition was filed challenging the order of assessment (there was no challenge to the appellate order). This writ petition was entertained by the High Court noticing that statutory pre-deposit had been effected and the employee in charge of tax matters had been dismissed leading to the delay in filing of appeal. That petitioner was put to terms. Upon compliance with the terms imposed, the matter was heard and the writ petition came to be allowed quashing the order of assessment and relegating the matter to the assessing authority to be redone afresh after hearing the petitioner. It is thus that the revenue carried the matter in appeal to the Supreme Court arguing that the High Court had exceeded its jurisdiction and committed a manifest error in admitting a writ petition beyond the period of limitation set out in the concerned statute. A plethora of case law on this issue was examined by the Supreme Court.

15. The cases discussed are, Mafatlal Industries Ltd. v. Union of India (1997 (89) E.L.T. 247 (S.C.)); K.S. Rashid & Son v. Income Tax Investigation Commission (AIR 1954 SC 207); Thansingh Nathmal v. Superintendent of Taxes (AIR 1964 SC 1419); Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad now Zila Parishad (AIR 1969 SC 556); Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited ((2017) 5 SCC 42); Titaghur Paper Mills Co. Ltd. v. State of Orissa ((1983) 2 SCC 433. Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission ((2010) 5 SCC 23); ITC Ltd. v. Union of India (1998 (101) E.L.T. 9 (S.C.)); Nivedita Sharma v. Cellular Operators Association of India ((2011) 14 SCC 337); Raja Mechanical Co. (P) Ltd. v. Commissioner (2013 (29) S.T.R. 81 (S.C.)) = (2012 (279) E.L.T. 481 (S.C.)); Singh Enterprises v. Commissioner (2008 (221) E.L.T. 163 (S.C.)); State v. Mushtaq Ahmad ((2016) 1 SCC 315); Suryachakra Power Corporation Limited v. Electricity Department ((2016) 16 SCC 152); Commissioner v. Hongo India (P) Ltd. (2009 (236) E.L.T. 417

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(S.C.)); Electronics Corporation of India Limited v. Union of India (2018 (361) E.L.T. 22 (A.P.)); Panoli Intermediate (India) Pvt. Ltd. v. Union of India (2015 (326) E.L.T. 9 532 (Guj.)); Phoenix Plasts Company v. Commissioner (2013 (298) E.L.T. 481 (Kar.)).

16. At para 12 the Bench states that indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly no wider than the plenary powers bestowed to the Supreme Court under Article 142 of the Constitution that constituted a conglomeration and repository of the entire judicial power under the Constitution, enabling the Supreme Court to do complete and total justice. Even so, the Court says the power under Article 142 must be exercised bearing in mind legislative intent and with a view not to render the statutory provision otiose.

17. At para 14 they state 'A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in (2016) 1 SCC 315 reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution'.

18. At para 15 they state that the scope of jurisdiction under Article 226 and 227 cannot be curtailed by the limitation prescribed under an statute. Thus while challenges to assessment may be considered on several grounds such as, the order having been passed by an Officer without jurisdiction, in flagrant disregard of law or procedure, the violation of principles of natural justice or the bar of limitation, if the petitioner has missed the bus, as regards the statutory limitation prescribed under the statute, such a challenge cannot be entertained by the High Court 'as a matter of course'.

19. The wide powers with which the High Court is invested must not be exercised in such a way that are inconsistent with legislative intent prescribing a rigid limitation under statute. In conclusion, the Bench reverses the decision of the High Court and allows the writ appeals saying that no case have been made out

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either before the High Court, and no finding has been recorded by the High Court in regard to its decision for entertaining the writ petition beyond the period of statutory limitation.

20. Article 226 of the Constitution of India is thus, elastic enough to accommodate challenges to proceedings beyond the period provided under limitation, although such discretion has to be exercised very sparingly and the situation causing the delay examined closely and minutely.

21. This then, is the basis upon which I propose to dispose this batch of Writ Petitions. I have considered the circumstances leading to the delayed challenge to the impugned orders of assessment in each case, individually. In doing so, I envisage two road blocks that the petitioners would have to cross. The first one relates to the delay occasioned in approaching this Court beyond the period of statutory limitation and explanation thereto. In my view, the explanation offered at this stage, would have to comprise of purely personal/human/medical reasons. Failure to convince the court at this stage would result in the writ petition being dismissed in limine.

22. If the petitioner crosses the first barrier, the Writ Petition should be established to be maintainable applying settled parameters, notwithstanding the availability of an alternate remedy. If the petitioner is successful, the Court might be persuaded to consider the challenge, permitting it to either file a belated appeal without reference to limitation or, depending on the merits of the matter, consider interference under Article 226 in the order itself

8. The discussion as above is reiterated in the present matter as well. The only difference between the two batches of writ petitions is that in those cases, the challenge was to assessment and appellate orders where the appeals had been dismissed on the question of delay, and the petitioners in the present batch challenge orders of cancellation of registration where no appeals have been

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filed or appeals have been filed belatedly and rejected by the authority on the ground of limitation.

9.In a substantial number of Writ Petitions, the petitioners have filed appeals that are significantly delayed before the appellate authority. In most of the cases, they have taken advantage of the extension of time that had been granted by the Hon'ble Supreme Court in filing appeals in the case of *In Re: Cognizance* and even thereafter, in some cases, there have been delays. I now proceed to apply the approach as taken in the case of *Keshav Ply N Laminates* and decide each writ petition, on the strength or otherwise of the specific case.

Matters coming under the CGST Act

W.P.No.25950 of 2022:

10.The appeal filed by the petitioner challenging order of cancellation of registration has been rejected as time barred by four days. The date of cancellation of registration is 08.02.2022 and the appeal ought to have been filed on or before 12.08.2022 after filing of returns for 6 months along with tax and interest.

11.Learned Standing Counsel, while accepting the position that the tax has been paid, would submit that interest has not been paid. No clarity is forthcoming in this regard from the learned counsel for the petitioner. That apart, the explanation given by the petitioner in regard to the delay of filing of appeal, which is 4 days beyond the statutory time limit is that the certified copy

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of order dated 13.04.2022 passed by R2 rejecting the application seeking revocation of cancellation, has been received belatedly, but there is no proof placed on file in this regard.

12. However, learned Standing Counsel does not have any serious objection to the appellate authority entertaining the appeal, bearing in mind the quantum of delay of 4 days only. In light of the aforesaid, the appeal stands restored to the file of the appellate authority/R1, who shall take the appeal on file without reference to limitation, but ensuring compliance with all other statutory conditions, and, if found maintainable on all other aspects, shall dispose the same expeditiously, and in accordance with law.

13.This Writ Petition is dismissed, though with liberty as above. No costs. Connected Miscellaneous Petitions are closed.

W.P.No.26653 of 2022:

14. The appeal has been filed before the first appellate authority as against the cancellation of registration, which is dated 25.01.2021, with a delay of 87 days. The justification set out for the delay of 87 days in filing of appeal is that the business of the petitioner was paralysed.

15. In light of the judgment of the Hon'ble Supreme Court in the case of *Glaxo Smith Kline Consumer Health Care Limited* (supra) and order of this Court in *M/S.Kesaav Ply N Laminates* (supra), the explanation set forth, does not, in the considered view of the Court, merit acceptance.

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16.This Writ Petition is dismissed. No costs.

W.P.No.27033 of 2022:

17.The petitioner is called absent. In any event, the appeal has been filed before the first appellate authority with a delay of 38 days and there is no reason set out in the affidavit filed in support of the Writ Petition justifying the said delay.

18. In light of the judgment of the Hon'ble Supreme Court in the case of *Glaxo Smith Kline Consumer Health Care Limited* (supra) and order of this Court in *M/S.Kesaav Ply N Laminates* (supra), this Writ Petition is dismissed. No costs.

W.P.No.28151 of 2022:

19.The appeal has been filed challenging an order of cancellation of registration, dated 10.11.2020, with a delay of 11 days before the appellate authority who has rejected the same vide order dated 14.07.2022.

20.The explanation set out in the affidavit filed in support of the Writ Petition is hardship, mental agony and financial loss that the petitioner has faced on account of the COVID -19 pandemic.

21.For the reasons as aforesaid, seeing as there is no serious objection put forth by the learned standing counsel to the appellate authority entertaining the appeal, and bearing in mind the quantum of delay of 11 days only, the appeal stands restored to the file of the appellate authority/R2. R2 shall take the

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appeal on file without reference to limitation, but ensuring compliance with all other statutory conditions, if any, and if found maintainable on all other aspects, dispose the same expeditiously, and in accordance with law.

22.This Writ Petition is dismissed, though with liberty as above. No costs.

<u>W.P.No.26088 of 2022:</u>

23.The appeal has been filed challenging order of cancellation of registration, which is dated 17.03.2022, with a delay of 2 days before the appellate authority who has rejected the same vide order dated 25.08.2022.

24.The explanation set out in the affidavit filed in support of the Writ Petition is hardship, mental agony and financial loss that the petitioner has faced on account of the COVID -19 pandemic.

25.For the reasons as aforesaid, seeing as there is no serious objection put forth by the learned standing counsel to the appellate authority entertaining the appeal, and bearing in mind the quantum of delay of 2 days only, the appeal stands restored to the file of the appellate authority/R1, who shall take the appeal on file without reference to limitation, but ensuring compliance with all other statutory conditions, if any. If found maintainable on all other aspects, R2 shall dispose the appeal expeditiously, and in accordance with law.

26.This Writ Petition is dismissed with liberty as above. No costs.

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W.P.No.14879 of 2022:

27.Mr.Pramod Kumar Chopda, learned Senior Standing Counsel for the respondent would not contest this Writ Petition based on written instructions of the Assessing Authority dated 15.11.2022 to the effect that the petitioner has filed GSTR 3B returns upto November, 2019 along with late fee.

28.That apart, the petitioner is stated to be engaged in the business of providing security services and the liability to goods and services tax is under reverse charge mechanism. Since outward supplies attract nil rate of tax, there is no requirement for payment of interest as well.

29.In light of the above, there is a direction to R1 to restore the registration in order to enable the portal to receive returns filed by the petitioner.

30.This Writ Petition is allowed. No costs.

W.P.No.18017 of 2022:

31.The date of cancellation of registration is 09.11.2020. No doubt, limitation for availing remedial action in this regard, was extended by the Hon'ble Supreme Court in the case of *In Re: Cognizance* (supra). By order dated 28.02.2022, the Hon'ble Supreme Court extended the period for filing of appeal by 90 days, within which period suitable action seeking remedy ought to have been pursued before the authorities.

32.The period of protection, of 90 days, expired on 29.05.2022.

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However, the present Writ Petition has been filed only on 11.07.2022, and no explanation is set forth for the intervening delay. Hence, this Writ Petition is dismissed. No costs.

W.P.No.25666 of 2022:

33.The petitioner has challenged an order dated 09.02.2022, which is the effective date of cancellation of registration. As against the same, no appeal has been filed by the petitioner, and the present Writ Petition has come to be filed on 19.09.2022. No reasons have been assigned in the affidavit, except to state that the order was not served through registered post or substituted service other than by uploading upon the portal.

34.The case of the revenue is that the uploading of the order upon the portal would tantamount to proper service under Section 169(d) of the Central Goods and Services Tax Act, 2017.

35. Section 169 reads as follows:

> *169. Service of notice in certain circumstances.*
> *(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—*
> *by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or*
> *by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his*

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authorised representative, if any, at his last known place of business or residence; or

by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

by making it available on the common portal; or

by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

36.This is countered by the petitioner by drawing attention to Section 169(2), which deploys the terms *'tendered' 'published'* or *'affixed'*. Thus, according to petitioner, the absence of the term *'uploaded'* as a mode of service, is conscious, and should not be taken to be proper service.

37. I find no merit in this argument. In my view, making an order available on the common portal would tantamount to *'tendering'* of that order to the recipient. That apart, I am also unable to ascribe any conscious intention on the part of the Legislature to exclude uploading as one of the modes of service. This argument is rejected.

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38.There is yet another aspect to the matter. The Income Tax Act 1961 permits uploading of orders upon the portal, or on the web application, and construes the same as a proper method of service. However that statute, in Explanations (r) to (u) of Section 144B thereof, contains a requirement that the official concerned, issue an alert either to the registered e-mail of the assessee or by way of SMS to the registered mobile number of the assessee, to bring to the notice of the assessee that such order/communication has been uploaded. Such a facility is not available under the GST Act.

39.The explanation put forth by the revenue in this regard, is that an assessee under the provisions of the Goods and Services Tax Act enactments is under a statutory obligation to file a return on monthly basis and hence is expected to visit the portal once a month for this purpose. The necessity for an alert thus stands obviated, for this reason.

40. I find this explanation acceptable and hence conclude that uploading of orders upon the common portal constitutes proper mode of service. The order in the present case has been uploaded on 09.02.2022 and the present challenge laid on 19.09.2022, is beyond the period of limitation.

41. In light of the judgment of the Hon'ble Supreme Court in the case of *Glaxo Smith Kline Consumer Health Care Limited* (supra) and an order of this Court in *M/S.Kesaav Ply N Laminates* (supra), this Writ Petition is dismissed. No costs.

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W.P.No.25637 of 2022:

42. The petitioner is called absent. The petitioner has challenged an order dated 08.03.2022, which is the effective date of cancellation of registration. No statutory appeal has been filed by the petitioner, who has proceeded to file the Writ Petition on 12.09.2022. No explanation/justification has been set forth in the affidavit, except to state that the order was not served through registered post or any other mode of substituted service, other than uploaded on the portal.

43.I have, in W.P.No.25666 of 2022, decided the above issue against the assessee (paragraphs 33 to 41 above) and the same order is taken to be passed in this Writ Petition as well. This Writ Petition stands dismissed. No costs.

W.P.No.27552 of 2022:

44.The petitioner has challenged an order dated 05.04.2022, which is the effective date of cancellation of registration. No statutory appeal has been filed by the petitioner, who has proceeded to approach this Court by way of Writ Petition on 12.10.2022. No explanation/justification for the delay has been set forth except to state that the order was not served through registered post or any other mode of substituted service other than uploaded on the portal.

45.I have, in W.P.No.25666 of 2022, decided the above issue against the assessee (paragraphs 33 to 41 above) and the same order is taken to be passed

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in this Writ Petition as well. This Writ Petition stands dismissed. No costs.

W.P.No.30081 of 2022:

46.The order of cancellation is dated 08.06.2022 and the period of 120 days, which includes a period of 30 days that may be condoned, expires on 06.10.2022. This Writ Petition has been filed on 07.11.2022 with a delay of 31 days. The entirety of the tax and interest is stated to have been admittedly remitted.

47.Learned Standing Counsel does not have any serious objection to the appellate authority entertaining the appeal, bearing in mind the quantum of delay of 31 days only.

48.In light of the above, the petitioner is permitted to move the appellate authority within a period of four (4) weeks from date of receipt of this order. Appeal, if filed within the time frame as aforesaid, will be taken on file by the appellate authority without reference to limitation, but ensuring compliance with other statutory conditions, if any. If found maintainable on all other aspects, the appeal shall be disposed expeditiously by the authority, and in accordance with law.

49.This Writ Petition is dismissed, though with liberty as above. No costs.

W.P.No.30227 of 2022:

50.The petitioner has challenged an order dated 16.01.2022, which is the

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effective date of cancellation of registration. As against the same, remedy of statutory appeal has not been availed and instead, a Writ Petition filed on 11.11.2022. The reasons set forth in explaining the delay are in general terms, being financial difficulty. In the considered view of the Court the explanation does not merit acceptance.

51.This Writ Petition is dismissed. No costs.

W.P.No.27189 of 2022:

52.The cancellation of registration in this case is dated 07.03.2022 and the present Writ Petition has been filed on 23.09.2022. However, the petitioner has filed a revocation application before R2, along with an application seeking condonation of delay, within the condonable period. The dues have been remitted on 17.06.2022. The prayer in the Writ Petition is for revocation of the impugned order of cancellation on the ground that the statutory application for revocation is pending before R2.

53.In such circumstances, let R2 pass an order upon the revocation application filed on 29.04.2022. Needless to say, a decision on delay, if any, in filing the application for condonation shall be taken by the authority, in accordance with law.

54. This writ Petition is disposed as above. No costs.

W.P.No.27759 of 2022:

55.The petitioner has challenged order dated 12.03.2022, which is the

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effective date of cancellation of registration. As against the same, no appeal has been filed by the petitioner, who has straight away filed this Writ Petition on 13.10.2022. No reasons have been assigned in the writ affidavit explaining the delay, except to state that the order was not served through registered post or any other mode of substituted service other than uploading upon the portal. Hence, the petitioner was unable to move the appellate authorities within the period of limitation.

56.I have, in W.P.No.25666 of 2022, decided the above issue against the assessee (paragraphs 33 to 41 above) and the same order is taken to be passed in this Writ Petition as well. This Writ Petition stands dismissed. No costs.

Matters coming under the SGST Act

W.P.No.30356 of 2022:

57.The petitioner has challenged an order in first appeal. Normally, the Writ Petition would have been maintainable seeing as there is no Tribunal constituted in terms of the provisions of Section 112 of the Tamil Nadu Goods and Services Tax Act, 2017. However, the reason for rejection of the statutory appeal is that the appeal had been preferred beyond the statutory period of condonation as the authority is not empowered under the Statute to condone delay beyond a period of 90 + 30 days. No explanation is set out for filing the appeal belatedly.

58.That apart, the impugned order is dated 02.11.2022 and the present

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Writ Petition has been filed on 10.11.2022.

59.In light of the discussion as above, there is no merit in this Writ Petition and the same is dismissed. No costs.

W.P.No.30144 of 2022:

60. The order of cancellation of registration is dated 02.05.2022, as against which, either application for revocation ought to have been filed within 30 days, on or before 02.06.2022, or appeal within 120 days (including 30 days of extended period), on or before 02.09.2022. The appeal has been filed on 06.10.2022 and the same has been rejected on 18.10.2022 for reason that the same had been filed beyond the statutory period of limitation.

61. The explanation for the delay as set out in grounds (iii) of the writ affidavit, is the ill health of the petitioner. In such circumstances, there is, fairly, no serious objection to the condonation of delay, put forth by the State counsel, as well. Thus, the appeal is restored to the file of the appellate authority, who shall hear the same on merits and pass orders expeditiously, and in accordance with law.

62. The impugned order is set aside and this Writ Petition is allowed. No costs.

W.P.No.4522 of 2020:

63. The order of cancellation of registration is dated 30.09.2018. To be noted, the petitioner had availed both statutory remedies of revocation of

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cancellation of registration as well as appellate remedy. The application for revocation of cancellation of registration came to be rejected on 12.04.2019. The petitioner has challenged the cancellation of registration by way of appeal filed on 09.12.2019, whereas, the limitation under Section 107 of the Act expired on 31.01.2019. The appeal thus came to be rejected on 11.12.2019 on the ground that the same has been beyond the period of statutory limitation.

64. The reasons for delay as set out in the affidavit filed in support of the Writ Petition is that the Accountant had left the organization. The petitioner also states that notices were sent to the Consultant's e-mail ID and hence the petitioner was not aware of the same.

65. This Court is unable to accept these reasons, since the petitioner has, in fact, filed revocation application on 01.04.2019 and thus was well aware of the cancellation of registration in April, 2019 itself. Thus, nothing prevented the petitioner from taking timely action in this regard. The reasons set out are found to be contrary to the sequence of dates and events that have transpired in this matter.

66. In light of the aforesaid, this Writ Petition is dismissed. No costs.

W.P.Nos.4686 and 4693 of 2020:

67. Mr.Prashanth Kiran, learned Government Advocate submits that the registration of the petitioner has been restored.

68. Recording the aforesaid, the impugned order is set aside and these

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Writ Petitions are allowed. No costs.

W.P.No.19334 of 2022:

69. The order of cancellation is dated 07.08.2019 and the present Writ Petition has been filed on 22.07.2022 without assigning any reason for the intervening delay. I thus find no justification to intervene in the impugned order and the same is confirmed.

70. This Writ Petition is dismissed. No costs.

W.P.No.25964 of 2022:

71. The order of cancellation is dated 21.03.2022, as against which appeal was filed on 20.07.2022 with a delay of 16 days. However, the said appeal has been rejected as being beyond the statutory period of limitation.

72. The petitioner has furnished an explanation for the delay that had been occasioned at paragraph 3 of the affidavit being Covid – 19 pandemic. This Court is persuaded to accept the explanation tendered.

73. In such circumstances, and there being no serious objection by the learned counsel for the respondent for the relief sought, the appeal is restored to the file of the appellate authority, who shall proceed to hear the same on merits and pass orders expeditiously, and in accordance with law.

74. The impugned order is set aside and this Writ Petition is allowed. No costs.

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W.P.No.26608 of 2022:

75. The order of cancellation is dated 28.11.2019 and the present Writ Petition has been filed on 27.09.2022 without assigning any justifiable reason for the intervening delay except to state that they have faced difficulties on account of the COVID -19 pandemic, which in the considered view of the Court does not merit acceptance. I thus find no justification to intervene in the impugned order and the same is confirmed.

76. This Writ Petition is dismissed. No costs.

W.P.No.26623 of 2022:

77. The order of cancellation is dated 29.03.2022 and the present Writ Petition has been filed on 26.09.2022. The only reason assigned is that the part-time accountant had not filed the returns, which in the considered view of the Court does not merit acceptance. I thus find no justification to intervene in the impugned order and the same is confirmed.

78. This Writ Petition is dismissed. No costs.

W.P.No.26717 of 2022:

79. The order of cancellation is dated 24.12.2019 and the present Writ Petition has been filed on 27.09.2022 without assigning any justifiable reason for the intervening delay except to state that the Accountant had left his job, which in the considered view of the Court does not merit acceptance. I thus find no justification to intervene in the impugned order and the same is

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confirmed.

80. This Writ Petition is dismissed. No costs.

W.P.No.27381 of 2022:

81. The order of cancellation is dated 09.05.2022, as against which appeal was filed on 09.09.2022 with a delay of 16 days. However, the said appeal has been rejected as being beyond the statutory period of limitation.

82. The petitioner has furnished some explanation for the delay stating that the Consultant has misunderstood the procedure for filing of returns, which the Court finds acceptable.

83. In such circumstances, and there being no serious objection by the learned counsel for the respondent, the appeal is restored to the file of the appellate authority, who shall hear the same on merits and pass orders expeditiously, and in accordance with law.

84. The impugned order is set aside and this Writ Petition is allowed. No costs.

W.P.No.27768 of 2022:

85. The petitioner has prayed for a writ of certiorarified mandamus quashing order dated 09.03.2022 cancelling the registration under the provisions of the State GST Act and for a direction to the respondents to restore the registration.

86. As regards the prayer for certiorari, the Court is unable to accept the

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same, seeing as the petitioner has challenged the cancellation of registration by way of statutory appeal before the first appellate authority with a delay of 90 days.

87. The appeal ought to have been filed on or before 07.07.2022, but has been filed only on 21.09.2022 and the appeal is pending as on date. The petitioner is a senior citizen and has filed sufficient proof to indicate medical ailments.

88. In light of the aforesaid circumstances and there being no serious objection by the learned Government Advocate to the relief proposed to be granted by this Court, there is a direction to the appellate authority/R2 to dispose the appeal filed by the petitioner on 21.09.2022 on merits and in accordance with law, without reference to limitation, but ensuring compliance with all other statutory conditions, if any. Mandamus as sought for is issued.

89. This Writ Petition is disposed as above. No costs.

W.P.No.27816 of 2022:

90. The order of cancellation is dated 09.03.2022, as against which appeal was filed on 12.08.2022 with a delay of 34 days. However, the said appeal has been rejected as being beyond the statutory period of limitation.

91. The petitioner has furnished some explanation for the delay stating that with the great difficulty, the petitioner has filed 3 months returns along with tax, which the Court finds acceptable.

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92. In such circumstances, and there being no serious objection by the learned counsel for the respondent, the appeal is restored to the file of the appellate authority, who shall hear the same on merits and pass orders expeditiously, and in accordance with law.

93. The impugned order is set aside and this Writ Petition is allowed. No costs.

W.P.No.27854 of 2022:

94. The date of cancellation of registration is 10.05.2022. As against the same, the petitioner, neither filed revocation of cancellation nor appeal before the appellate authority, but has presented this Writ Petition on 14.10.2022.

95. The period of 120 days for filing appeal would expire on 09.09.2022. Thus, even taking date of presentation of the Writ Petition as being the date on which appeal was filed, there is a delay of one month.

96. The petitioner had set out some explanation in the affidavit filed in support of the Writ Petition stating that he did not have a cordial relationship with the consultant who was handling GSTR filing, which this Court finds acceptable.

97. In light of the aforesaid, the petitioner is permitted to file an appeal before the appellate authority within a period of four (4) weeks from date of receipt of this order. Appeal, if any, filed within the time frame fixed, shall be entertained by the appellate authority without reference to limitation, but

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ensuring compliance with all other statutory conditions, if any, and disposed in accordance with law.

98. This Writ Petition is dismissed with liberty. No costs.

W.P.No.28133 of 2022:

99. The date of cancellation of registration is 28.03.2022. As against the same, the petitioner has neither filed revocation of cancellation nor appeal before the appellate authority, but has presented this Writ Petition on 17.10.2022.

100. Even reckoning the period of 120 days for filing appeal that expires on 27.07.2022, this Writ Petition has been filed beyond the period of three months after the expiry of the statutory timeline. The petitioner has stated that he was mentally affected on account of the loss in the business due to COVID-19 pandemic. However, no evidence in this regard is placed before the Court.

101. Hence, and being unconvinced with the reason for the delay, this Writ Petition is dismissed. No costs.

W.P.No.28206 of 2022:

102. The order of cancellation of registration is dated 21.02.2022, as against which appeal was filed on 05.07.2022 with a delay of 15 days. However, the said appeal has been rejected as being beyond the statutory period of limitation.

103. The petitioner has furnished some explanation for the delay stating

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that the petitioner is unable to continue its business due to COVID-19 pandemic, which the Court finds acceptable.

104. In such circumstances, and there being no serious objection by the learned counsel for the respondent, the appeal is restored to the file of the appellate authority/R2, who shall hear the same on merits and pass orders expeditiously, and in accordance with law.

105. The impugned order is set aside and this Writ Petition is allowed. No costs.

W.P.No.28415 of 2022:

106. The order of cancellation of registration is dated 21.04.2022, as against which revocation application has been filed within the time prescribed under the Statue. However, the same has been rejected on 17.05.2022. The order is vague and non-speaking and merely states that there has been no compliance with notice dated 05.05.2022.

107. Learned counsel for the petitioner would submit that the petitioner has remitted all tax dues upto June, 2022.

108. In such circumstances, the impugned order is set aside as being non-speaking. Let the application for revocation be heard afresh after issuance of notice to the petitioner and orders passed in accordance with law within a period of eight (8) weeks from date of receipt of this order.

109. This Writ Petition is allowed. No costs.

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W.P.No.28600 of 2022:

110. The order of cancellation of registration is dated 10.10.2018. Admittedly, the petitioner has filed an appeal only on 29.04.2021, which come to be rejected on the ground that it has been filed beyond the period of statutory limitation as per Section 107(4) of the Act.

111. The reasons for the delay are stated to be that one of the tenants, i.e., Punjab National Bank had delayed significantly the payment of rent. As a result, the petitioner was unable to make the tax payments, which was necessary for filing of appeal. However, this Court is unable to accede to the request of the petitioner for condonation of the intervening delay as I do not find the explanation credible or acceptable.

112. In light of aforesaid, this Writ Petition is dismissed. No costs.

W.P.No.29113 of 2022:

113. The order of cancellation is dated 03.01.2022 and the last date for filing of appeal was on 03.05.2022. The present Writ Petition has been filed on 31.10.2022. Though there is some explanation tendered for the delay, being the advanced age of the petitioner and ailments that have been suffered by him in the past, the same do not convince the Court as justifying the intervening delay. I thus find no necessity to intervene in the impugned order and the same stands confirmed.

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114. This Writ Petition is dismissed. No costs.

W.P.No.29120 of 2022:

115. The order of cancellation is dated 03.02.2022 and the last date for filing of appeal was on 05.06.2022. The present Writ Petition has been filed on 31.10.2022. Though there is some explanation tendered in regard to the age of the petitioner and ailments that have been suffered by him in the past, the same do not convince the Court as constituting sufficient justification for condoning the intervening delay. I thus find no justification to intervene in the impugned order and the same is confirmed.

116. This Writ Petition is dismissed. No costs.

W.P.No.29172 of 2022:

117. The order of cancellation of registration is dated 03.01.2022 and the last date for filing of appeal was 05.05.2022. The present Writ Petition has been filed on 02.11.2022 without assigning any reason for the intervening delay. I thus find no justification to intervene in the impugned order and the same is confirmed.

118. This Writ Petition is dismissed. No costs.

W.P.No.29438 of 2022:

119. The order of cancellation of registration is dated 09.12.2021 and the last date for filing of appeal was 09.04.2022. The present Writ Petition has been filed on 03.11.2022 without assigning any reason for the intervening

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delay. I thus find no justification to intervene in the impugned order and the same is confirmed.

120. This Writ Petition is dismissed. No costs.

W.P.No.29745 of 2022:

121. The order of cancellation of registration is dated 06.10.2020 and the last date for filing of appeal was 06.02.2021. The present Writ Petition has been filed on 02.11.2022 without assigning any reason for the intervening delay. I thus find no justification to intervene in the impugned order and the same is confirmed.

122. This Writ Petition is dismissed. No costs.

W.P.No.29775 of 2022:

123. The order of cancellation of registration is dated 12.11.2019 and the last date for filing of appeal was 12.03.2020. However, on 15.03.2020, the Hon'ble Supreme Court taking judicial cognizance of the COVID-19 pandemic, extended the limitation for filing of appeals, *In Re:Cognizance*, effective till 29.05.2022.

124. The petitioner in this case is, in my considered view, entitled to this benefit of extension despite the limitation having expired four days prior to the date of initial order of the Hon'ble Supreme Court on 15.03.2020.

125. The petitioner has, in fact, filed an appeal on 08.12.2021 that has come to be dismissed on the ground of delay. In light of the narration as

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aforesaid, I am of the view that the delay that has been occasioned should be restricted to 4 days, if at all, and such delay is, in my considered view, condonable.

126. The appeal is restored to the file of the appellate authority/R1, who shall hear the same on merits without reference to limitation and pass orders expeditiously, and in accordance with law.

127. The impugned order is set aside and this Writ Petition is allowed. No costs.

W.P.No.30046 of 2022:

128. The order of cancellation of registration is dated 14.02.2022, as against which appeal was filed on 26.07.2022 with a delay of 26 days. However, the said appeal has been rejected as being beyond the statutory period of limitation.

129. The petitioner has furnished some explanation for the delay citing ill health and financial constraints, which the Court finds acceptable.

130. In such circumstances, there being no serious objection by the learned counsel for the respondent, the appeal is restored to the file of the appellate authority, who shall hear the same on merits and pass orders in accordance with law.

131. The impugned order is set aside and this Writ Petition is allowed. No costs.

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W.P.No.30075 of 2022:

132. The petitioner is called absent. The order of cancellation of registration is dated 14.12.2021 and the last date for filing of appeal was 14.04.2022. The present Writ Petition has been filed on 09.11.2022 without assigning any reason for the intervening delay. I thus find no justification to intervene in the impugned order and the same is confirmed.

133. This Writ Petition is dismissed. No costs.

W.P.No.30108 of 2022:

134. The date of cancellation of registration is 28.06.2022. The last date of filing of appeal expired on 28.10.2022. The petitioner has presented this Writ Petition on 09.11.2022.

135. The petitioner had set out some explanation in the affidavit filed in support of the Writ Petition stating that she is not familiar with the procedures involved in initiating the litigation, which this Court finds acceptable.

136. In light of the aforesaid, the petitioner is permitted to file an appeal before the appellate authority within a period of four (4) weeks from date of receipt of this order. Appeal, if any, filed within the time frame fixed, shall be entertained by the appellate authority without reference to limitation, but ensuring compliance with all other statutory conditions, if any, and disposed in

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accordance with law.

137. This Writ Petition is dismissed with liberty as above. No costs.

W.P.No.30241 of 2022:

138. The order of cancellation of registration is dated 09.05.2022 and the last date for filing of appeal was 09.09.2022. The present Writ Petition has been filed on 07.11.2022. The petitioner is a company and the only reason that has been given for the delay in availing remedial measures is that it was unaware of the methodology for seeking revocation, which in the considered view of the Court does not merit acceptance. I thus find no justification to intervene in the impugned order and the same is confirmed.

139. This Writ Petition is dismissed. No costs.

W.P.No.30279 of 2022:

140. The order of cancellation of registration is dated 17.03.2022. The last date for filing of appeal was 17.07.2022. The Writ Petition has been filed on 10.11.2022.

141. The reasons for the delay are stated to be that payments had been due from TANGEDCO for the supplies made and hence returns could not be filed. However, this Court is unable to accept to the request of the petitioner for condonation of the intervening delay as it is incumbent upon the petitioner to ensure statutory compliances within the timelines provided.

142. In light of aforesaid, this Writ Petition is dismissed. No costs.

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W.P.No.30283 of 2022:

143. The order of cancellation of registration is dated 03.02.2022. The last date for filing of appeal was 03.06.2022. The Writ Petition has been filed on 10.11.2022.

144. The reasons for the delay are stated to be that payments had been due from TANGEDCO for the supplies made and hence returns could not be filed. However, this Court is unable to accept to the request of the petitioner for condonation of the intervening delay as it is incumbent upon the petitioner to ensure statutory compliances within the timelines provided.

145. In light of aforesaid, this Writ Petition is dismissed. No costs.

146.This batch of writ petitions is thus disposed in light of the discussion above. Each writ petition has been considered on the strength of the relevant facts that emanate in that matter. I have thereafter examined whether there is a justification to intervene based upon the conclusion and ratio contained in the judgment of the Hon'ble Supreme Court in the case of *Glaxo Smith Kline* (supra).

147. Dehors the conclusions arrived at in the case of the respective petitioners, it is made clear that all petitioners are at liberty to seek restoration of registration in accordance with law and learned Standing counsels would

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also accede to this position. All connected miscellaneous petitions are closed and there shall be no order as to costs.

16.11.2022

Index : Yes
Speaking Order
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Note:Issue order copy on 20.12.2022.

To

The Superintendent of Central Tax,
Nungambakkam Zone IV, Chennai Central,
Range 1, Guindy MHU Complex,
692, Anna Salai, Nandanam,
Chennai 600 035.

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Dr.ANITA SUMANTH,J.

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W.P.Nos.14879, 26088, 18017, 25637, 25666, 25950, 26653, 27033, 27189, 27759, 28151, 30227, 27552, & 30081 of 2022 and
W.P.Nos.4522, 4686 & 4693 of 2020 &
W.P.Nos.19334, 25964, 26608, 26623, 26717, 27381, 27768, 27816, 27854, 28133, 28206, 28415, 28600, 29113, 29120, 29172, 29438, 29745, 29755, 30046, 30075, 30108, 30241, 30279, 30356, 30144 & 30283 of 2022

WMP Nos.14082, 25158, 17339, 17340, 24630, 24633, 24684, 25707, 25709, 26253, 27051, 29658, 29659, 26800, 29499 & 29501 of 2022
WMP.Nos.5365, 5369, 5537, 5541, 5544 & 5547 of 2020 &
WMP.Nos.18606, 18608, 25661, 25674, 25776, 26589, 26591, 27059, 27060, 27148, 27420, 27499, 27500, 27887, 28410, 28413, 28399, 28401, 28456, 28771, 28773, 29140, 29157, 29489, 29491, 29537, 29538, 29669, 29671, 29710, 29711, 29716 & 29718 of 2022

16.11.2022