

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11874 of 2024

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1. M/s Vaibhav Gopal Construction Private Limited having its registered office at Z-6, Ashiana Phase-I, Ashiana Nagar, Patna, Bihar- 800025 through its Director Sandhya Kumari (Female) aged about 39 years, W/o Mani Shankar, R/o House no. Z-6, Ashiana Phase-I, Ashiana Nagar, Patna, Bihar- 800025.
 2. Sandhya Kumari W/o Mani Shankar R/o House no. Z-6, Ashiana Phase-I, Ashiana Nagar, Patna, Bihar- 800025.

... .. Petitioner/s

Versus

1. The Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi- 110001.
2. Additional Commissioner (Appeals), Customs, Central GST and Central Excise, Patna having its office at 2nd Floor, C.R. Building (Annexe.), Bir Chand Patel Path, Patna.
3. Superintendent, CGST and CX, Kotwali Range Patna (Central).
4. The State of Bihar through its Commissioner cum Secretary, Commercial Taxes Department, Government of Bihar.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 11941 of 2024

M/S Lal Bahadur Yadav having its place of business at Dudhaila, Dighiya, District- Supaul, State Bihar - 847452 through its proprietor namely Lal Bahadur Yadav, Male, Aged about - 54 Years, Son of Chichay Yadav, Resident of Dudhaila, Dighiya, District - Supaul, State Bihar - 847452.

... .. Petitioner/s

Versus

1. Union of India through the Secretary (Revenue), Ministry of Finance, Government of India, North Block, New Delhi- 110001.
2. The Goods and Services Tax Council, through its Secretary, 5th Floor, Tower II, Jeevan Bharati Building, Janpath Road, Cannaught Place, New Delhi- 110001.
3. The Commissioner of Central GST and Central Excise, Patna - I, 3rd Floor, Kendriya Rajaswa Bhawan (Annexe Building), Bir Chand Patel Path, Patna-



800001.

- 4. The Additional Commissioner (Appeals) Office of the Commissioner (Appeals) of Customs, Central GST and Central Excise, Patna, 2nd Floor, CR Building (Annexe), Bir Chand Patel Path, Patna.
- 5. The Superintendent Central Goods and Services Tax and Central Excise, Supaul Range, Purnea.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 11874 of 2024)

For the Petitioner/s : Mr.Sanjeev Kumar, Advocate
For the Respondent/s : Dr.K.N. Singh, ASG
Mr.Anshuman Singh, Sr. SC, CGST & CX
Mr.Devansh Shankar Singh, Advocate
Mr.Shivaditya Dhari Sinha, Advocate
Mr.Harsh Singh, Advocate

(In Civil Writ Jurisdiction Case No. 11941 of 2024)

For the Petitioner/s : Mr.Pramod Kumar Yadav, Advocate
For the Respondent/s : Dr.K.N. Singh, ASG

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-08-2024

The petitioners herein, who were registered under the Central Goods and Services Tax Act, 2017 (‘CGST ACT’ for brevity) and the Bihar State Goods and Services Tax Act, 2017 (for brevity ‘BGST Act’) are aggrieved with the cancellation of their registration and the dismissal of an appeal filed; which appeal was delayed; in both cases by three years. The petitioners have also raised a contention against the cancellation of registration as is provided under Section 29(2) of both the



enactments. The petitioners' contention is that this would run counter to the fundamental right of the petitioners to carry on any trade, occupation, or business under Article 19(1)(g) of the Constitution of India and the fundamental right to livelihood under Article 21 of the Constitution of India.

2. On the individual facts, we notice that the petitioner in CWJC 11874 of 2021 was issued with an order of cancellation of registration which is dated 15.01.2021, based on a show-cause notice issued on 05.01.2021. The petitioner's contention is that during the pandemic period, disaster struck in the family of the Director and both her in-laws and her own father died between March 2020 and June 2021. She had withdrawn from the business and she being the operational director of the company there was no business carried out in the said period. The petitioner also contends that the Goods and Services Tax related compliances were entrusted to a tax consultant; which compliance was not made and hence the registration stood cancelled as per Annexure-P/3 on 15.01.2021. The petitioner also contends that the operational director of the company was unaware of the cancellation and hence no appeal was filed. Only when she decided to restart the business, she became aware of the order passed. She immediately filed the



pending returns and deposited an amount of Rs. 27,36,058/- which is evidenced by Annexure-P/4 series of receipts. An appeal too was filed as per Annexure-P/4 which admittedly was grossly delayed. Annexure-P/6 is the order passed dated 16.04.2024 which rejected the appeal on the ground of delay.

3. The petitioner in CWJC No. 11941 of 2024 is aggrieved with the proceeding initiated by a show-cause notice dated 28.12.2000 which culminated in the cancellation of registration by the final order dated 14.01.2021. The show-cause notice and the final order of cancellation of registration is enclosed along with Annexure-P/1 of the writ petition which is the appeal filed before the First Appellate Authority. The appeal of the petitioner was rejected by Annexure-P/2 order on the ground of delay. The order challenged in the appeal as we noticed was dated 14.01.2021 and the appeal was filed on 30.04.2024. The various orders by which the Hon'ble Supreme Court had extended limitation during the pandemic period has also been annexed with Annexure-P/1 with which we shall deal a bit later. It was when the appeal was dismissed on the ground of delay that the petitioner has thought it fit to challenge the *vires* of the provision under Section 29 of the CGST Act.

4. At the outset, we have to observe that the



constitutional challenge made to the provision is a last-ditch effort, since the petitioners had not availed the statutory remedies in time and also not taken up its cause when there was a window of relief provided by way of a notification which permitted restoration of registration.

5. Learned counsel for the petitioner in CWJC 11874 of 2024 relied on the decision of the High Court of Bombay in ***Rohit Enterprises vs. Commissioner, Aurangabad & Ors.; (2024) 124 GSTR 503*** which in similar circumstances restored the registration of a business; on almost identical set of facts. It is also responded, to a specific query as to why the petitioner cannot seek for a fresh registration, that the goodwill of the company would be lost.

6. Section 107 of the BGST Act permits an appeal to be filed within three months and also apply for delay condonation with satisfactory reasons within a further period of one month. We have to take into account the saving of limitation granted by the Hon'ble Supreme Court in ***Suo Motu Writ Petition (C) No. 3 of 2020, In Re: Cognizance For Extension of Limitation***. Therein, due to the pandemic situation, limitation was saved between 15.03.2020 till 28.02.2022. It was also directed that an appeal could be filed within three months from



01.03.2022. In CWJC No. 11874 of 2024, the order impugned in the appeal was dated 15.01.2021. An appeal was to be filed on or before 15.04.2021 as permitted by the statute or within 14.05.2021 with satisfactory explanation for the delay. As per the decision of the Hon'ble Supreme Court an appeal could have been filed within 31.05.2022 and if necessary, with a delay condonation application within one month thereafter. The appeal is said to have been filed only on 17.05.2024, after about two years from the date on which even the extended limitation period expired.

7. The petitioner in CWJC No. 11941 of 2024 has also relied on the various orders of the Hon'ble Supreme Court. Here, the order impugned in the appeal was dated 14.01.2021. An appeal was to be filed on or before 14.04.2021 as permitted by the statute or within 14.05.2021 with satisfactory explanation for the delay. As per the decision of the Hon'ble Supreme Court an appeal could have been filed within 31.05.2022 and if necessary, with a delay condonation application within one month thereafter. The appeal is said to have been filed only on 13.06.2024, after about three years and one month from the date on which even the extended limitation period expired.

8. Section 30 of both the enactments provide for



revocation of cancellation of registration if applied for within thirty days. Further, the Government had come out with an Amnesty Scheme by Circular No. 3 of 2023, by which the registered dealers, whose registrations were cancelled were permitted to restore their registration on payment of all dues between 31.03.2023 to 31.08.2023. The petitioner did not avail of such remedy also.

9. The petitioner admittedly did not agitate the cause within the four walls of the statute and hence has raised the question of constitutional validity of Section 29(2) under both the enactments. We have seen the decision in ***Rohit Enterprises*** (*supra*) which only has a persuasive effect, which also does not have any declaration of law and has only exercised discretion under Article 226 of the Constitution of India on the facts which came out therein. The facts though not identical, the hardship projected is almost similar to that in CWJC 11874 of 2024 and the Division Bench of the High Court found that the constitutional guarantee to carry out trade and commerce is unconditional and unequivocal and it must be enforced regardless of shortcomings in the scheme of the GST enactment. We are unable to subscribe to the above view expressed by the learned Division Bench; with all the respect at our command.



10. Article 19(1)(g) is tempered with the exception under Article 19(2). The GST enactment makes it incumbent on any person carrying on trade and commerce within the country to get registered under the enactment, so as to ensure due compliance of the taxing enactments, which also are enacted under Articles 245 and 246 read with Article 265. It is trite that when a power to register under an enactment is given, such benefit of registration cannot be continued indefinitely or infinitely and it is incumbent upon the registered person to duly comply with the various provisions of such enactment; which alone would enable continued benefit of registration. Any authority empowered to grant registration would also have the power to cancel it when there is non-compliance detected; which is the specific provision under 29(2).

11. Coming back to the decision in ***Rohit Enterprises*** (*supra*) as we noticed, the hardship projected in CWJC 11874 of 2024 is almost identical though the mishap complained of is different; relatable to the pandemic period and the repeated deaths which occurred in the family of the operational director. The operational director of the petitioner does not clearly indicate the date on which she decided to resume the business or the date on which she came to know of the cancellation order.



As we noticed herein above, the Hon'ble Supreme Court after the pandemic subsided, had granted a window of three months with further period as granted in a statute for availing the statutory remedy which was not availed of by the petitioner. Then again by Circular no. 3 of 2023, a window of relief was offered to those persons whose registrations were cancelled, which was also not availed by the petitioner. As far as the delayed appeal is concerned, we already held that there can be no invocation of Article 226 of Constitution of India to interfere with the same.

12. We, respectfully disagree with the Division Bench of the Bombay High Court which again has only a persuasive effect on us and refuse to interfere with the order of cancellation in the same manner as the High Court of Bombay did. We also do not agree with the restriction projected, with respect to carrying on trade and commerce, since the cancellation of registration does not dis-entitle the petitioner from applying for a fresh registration. The argument raised of the goodwill being lost does not impress us.

13. As far as CWJC 11941 of 2024, there are no reasons stated for the delay in filing the appeal. The petitioner contends that they were not aware of Circular No. 3 of 2023, but



makes no mention of Section 30 or Section 107 of the GST Act. The further ground raised of *mens rea* is also fallacious since the very ground on which the cancellation was effected was of non-filing of returns for a consecutive period of six months. Both the petitioners have not disputed this fact and there is no substantiation of any such returns having been filed.

14. We also notice the Constitution Bench decision of the Hon'ble Supreme Court in *M.A. Rahman and Others vs. The State of Andhra Pradesh; 1962 SCR 694*. The challenge was against the Madras Sales of Motor Spirit Taxation Act which was made applicable to the State of Andhra Pradesh by an Extension and Amendment Act. The purpose and object of the Act was to levy and collect tax on retail sales of motor spirit and the liability for payment was placed upon the person effecting the sale. There was a provision for registration; which was for the purpose of identifying the dealer from whom the tax was due and also provided for suspension of such registrations in the event of contraventions. The challenge by the dealers in motor spirit within the State of Hyderabad was on the ground that such registration and cancellation were not reasonable restrictions on the fundamental rights of the petitioners to carry on business under Article 19(1)(g) of the Constitution of India.



It was urged that the cancellation of registration resulted in the total extinction of the business and was an unreasonable restriction thus making it *ultra vires*; as is the contention in the instant cases. There was no challenge against the provision for registration in the cited decision nor is it raised here too.

15. As far as the power conferred for cancellation, we extract the following paragraphs from the cited judgment;

Then we turn to sub-s. (6), which provides that any registration under sub-s. (1) may be suspended or cancelled by such authority, for such reasons, and in such manner, as may be prescribed. The main attack of the petitioners is on this sub-section. They contend that this sub-section authorises the State to cancel a registration. The effect of such cancellation read with sub-s. (1) is that a person whose registration is cancelled cannot carry on business in motor spirit as he was doing before the cancellation. It is said that cancellation results in the total extinction of the business of the person whose registration is cancelled and thus the provision as to cancellation is an unreasonable restriction on the fundamental right to carry on business.

There is no doubt that if a registration is cancelled under sub-s. (6) it will not be possible for the person whose registration is so cancelled to carry on his business in motor spirit. Rule 14 provides conditions under which the registration may be cancelled and we are in the present case concerned with two of them, namely, where the holder of a registration certificate (a) fails to pay the tax or any other amount payable under the Act and (b) fraudulently evades the payment of the tax.

The reasonableness of this provision as to cancellation of registration certificate has to be judged in the background of what we have already said about the purpose of the levy and its liability on the seller. It is true that there are other provisions in the law for



realisation of public dues from those who default in making payments; but generally speaking cancellation of registration in cases like these is one more method of compelling payment of tax which is due to the State. Collection of revenue is necessary in order that the administration of the State may go on smoothly in the interest of the general public. The State has therefore armed itself with one more coercive method in order to realise the tax in such cases. It is true that cancellation of registration may result in a dealer being unable to carry on the business, but the same result may even follow from the application of other of coercive processes for realisation of dues from a trader, for his assets may be sold off to pay the arrears of tax and he may thereafter be not in a position to carry on the business at all. Therefore the provision for cancellation of registration for failure to pay the tax or for fraudulently evading the payment of it is an additional coercive process which is expected to be immediately effective and enables the State to realise its revenues which are necessary for carrying on the administration in the interest of the general public. The fact that in some cases restrictions may result in the extinction of the business of a dealer would not by itself make the provision as to cancellation of registration an unreasonable restriction on the fundamental right guaranteed by Art. 19(1)(g). We may in this connection refer to Narendra Kumar v. The Union of India (1), where it was held that:

"the word 'restriction' in Arts. 19(5) and 19(6) of the Constitution includes cases of 'prohibition' also; that where a restriction reaches the stage of total restraint of rights special care has to be taken by the Court to see that the test of reasonableness is satisfied by considering the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and



whether the restraint caused by the law was more than was necessary in the interests of the general public."

Applying these tests we are of opinion that the cancellation of registration will be justified even though it results in the extinction of business as such cancellation is in respect of a tax meant for the general revenues of the State to carry on the administration in the interest of the general public.

16. As we observed, there is no ground validly raised against the delay in filing an appeal. We have already dealt with the extension of limitation as granted by the Hon'ble Supreme Court. In both the cases, it does not have any application. We also noticed Section 30 which provides for revocation of cancellation of registration if applied for within thirty days. Further, we have reckoned the window of relief granted by Circular No. 3 of 2023 which was also not availed by the petitioners herein.

17. We find absolutely no reason to exercise our discretionary power to interfere with the orders passed; clearly within the boundaries of the statute. Neither do we find any reason to entertain the writ petition on the ground of testing the constitutional validity of Section 29(2); which we have found to be a mere after thought and a last-ditch effort, and we have further expressed our views on the validity of the said challenge raised based on the binding precedent of the Constitution Bench



of the Hon’ble Supreme Court.

18. The writ petition is dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	09.09.2024
Transmission Date	

