

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Writ Jurisdiction)

WP(T) No. 6387 of 2023

M/s Rana Engineering, a proprietorship firm, having its principal place of business at Khata No. 304, Plot No. 995, Barhi, Hazaribagh, Jharkhand 825405 through its proprietor Sikandar Rana, age about 41 years, son of Gobardhan Rana, resident of Panja Bipara, PO and PS Barbil, District Kendujhar, Orissa 758035
..... **Petitioner**

Versus

1. Union of India, through the Commissioner, Government of India, Ministry of Finance, Department of Revenue, CGST and Central Excise Commissionerate, Ranchi having its office at Central Revenue Building 5A, Main Road, Ranchi, Jharkhand, PIN 834001, PO GPO and PS Kotwali

2. The Superintendent, Ministry of Finance, Department of Revenue, CGST and Central Excise Commissionerate, Range-1, Hazaribagh, having its office at Arya Nagar, near Muffassil Thana, NH-31, PO Muffassil, PS Hazaribagh, District Hazaribagh 825301
.... **Respondents**

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN KUMAR RAI**

For the Petitioner : Mr. Shreshth Gautam, Advocate

For the Respondents : Mr. P.A.S. Pati, Advocate

23rd February 2024

Per, Shree Chandrashekhar, A.C.J.

Mr. Rana Engineering is aggrieved by dismissal of Appeal Case No. 126/CGST/RAN/2023 by an order dated 8th September 2023. In this order, the Additional Commissioner of Central Taxes (Appeals) has held the appeal not maintainable and barred by limitation. The appellate authority has also held that the benefits under the Amnesty Scheme which was operative till 31st August 2023 cannot be extended in case of the petitioner-firm as the cancellation order was passed after 31st December 2022.

2. The petitioner-firm which is registered under the Goods and Service Tax (in short, GST) law with registration no. GSTIN No. 20AMCPR4953K1ZY did not file returns for a continuous period of more than six months and therefore a show-cause notice was issued to it on 9th December 2022. Having found the explanation offered by the petitioner-firm not satisfactory, the GST registration of the petitioner-firm was cancelled by an order dated 3rd February 2023 to be effective from 31st

January 2023. The petitioner-firm therefore filed an appeal under section 107 of the GST Act which, as noticed above, has been dismissed.

3. Section 39 of the GST Act provides that every registered person other than an input service distributor or a non-resident taxable person shall for every calendar month or part thereof furnish a return of inward and outward supply of goods and service. There are other requirements/stipulations under section 39 which every registered person/firm is required to comply. Section 45 provides a window to the registered person/firm for restoration of the registration by allowing/furnishing of a final return within three months from the date of the cancellation or from the date of the order of cancellation whichever is later. Under section 30, any registered person whose registration is cancelled may apply for revocation of cancellation of the registration in the prescribed manner. Mr. Shresth Gautam, the learned counsel has referred to registration advisory which was issued in November 2023 under which the period of 270 days was provided for filing a revocation application. The petitioner-firm did not avail the opportunities under section 30 as also not under section 45 to apply for restoration of its registration and straightway rushed to the appellate authority by filing an appeal under section 107 of the GST Act.

4. A glance at the provisions under section 107 would reveal that in the conditions mentioned under sub-sections 3 and 4 the appellate authority may extend the period of three months by another three months and also by another one month. This is thus quite apparent that in appropriate cases an appeal under section 107 can be filed within a period of seven months. Therefore, having regard to the provisions under sub-sections 3 and 4 of section 107, the delay in filing the appeal by the petitioner-firm could have been extended by the appellate authority and the appeal filed on 26th August 2023 which was within seven months from the date of order of cancellation was maintainable and could not have been rejected on the ground of delay. Besides this aspect of the matter, we are of the opinion that the appellate authority could have alternatively granted opportunity to the petitioner-firm to approach the appropriate authority under section 30 for revocation of the cancellation of licence after paying the applicable penalty, fines, interest etc. Section 14 of the Limitation Act,

1963 provides exclusion of time spent in prosecuting the matter in wrong forum. This is admitted at the bar that the application of the Limitation Act is not excluded in the GST Act and, therefore, the benefit under section 14 shall be available to the petitioner-firm, if necessary.

5. In the aforesaid circumstances, order dated 8th September 2023 is set aside and this writ petition is allowed to the extent that the petitioner-firm shall be permitted to file an application under section 30 after completing all the formalities within 30 days and that application shall be dealt with in accordance with law.

(Shree Chandrashekhar, A.C.J.)

(Arun Kumar Rai, J.)

Tanuj