

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10392-2022 (O&M)

Date of decision: 26.05.2022

M/s. Neo Built through its proprietor

.... Petitioner

Versus

ETO-cum-Proper Officer and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Manasvi Sharma, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, DAG, Haryana.

PANKAJ JAIN, J.

Assessee under the GST Act, 2017 (hereinafter referred to as 'Act') prays for issuance of a writ in the nature of certiorari for quashing of the order dated 15.05.2019 (Annexure P-4), whereby his registration under the Act has been cancelled and that action of the respondents dated 09.04.2022 (Annexure P-5), whereby his appeal preferred against the order dated 15.05.2019 has been rejected without even entertaining the same.

2. As per the petitioner, he was a Contractor under M/s. Indian Oil Corporation Ltd., Panipat for more than 20 years and migrated on to GST under GSTIN06AEDPB7042Q1ZE. Owing to ill health, he remained out of business from April 2018 to April 2020. Show cause notice was issued to him on 01.05.2019 (Annexure P-3) for cancellation of registration for the reason:-

'Discontinuation/Closure of business'

and he was directed to furnish reply within 07 working days, apart from appearing for personal hearing on 08.05.2019.

3. Admittedly, the petitioner did not respond and consequently order of cancellation of registration dated 15.05.2019 was passed. As per the petitioner, he resumed his regular business activities from June 2020 and also filed appeal against the order Annexure P-4 on 22.12.2021. The same was, however, rejected on 09.04.2022 (Annexure P-5). Acknowledgment for submission of the appeal in form GST APL-02 reads as under:-

“FORM GST APL - 02
[Refer Rule 108(3)]

Acknowledgment for submission of appeal

Name of applicant	GSTIN/Temp ID/UIN	Date
KALLOL KUMAR BAGCHI	06AEDPB7042Q1ZE	09/04/2022

Your appeal against ARN#AD061221003686G has been rejected.

1. Reference Number-	ZD060422001978F
2. Date of filing-	22/12/2021
3. Time of filing-	10.34 AM
4. Place of filing-	PANIPAT
5. Name of the person filing the appeal-	KALLOL BAGCHI
6. Amount of pre-deposit-	NA
7. Date of rejection of appeal-	09/04/2022
8. Reason for rejection-	Delay in submission of Appeal
9. Date of appearance-	Date: NA Time: NA
10. Court Number/Bench	JCST Court: Bench JCST APPEAL ROHTAK

Place: ROHTAK

Date: 09/04/2022

Name: Ombir Singh Sahrawat

Designation: Joint Excise and Taxation Commissioner

On behalf of Appellate Authority”

4. At the time of hearing, counsel for the petitioner has limited his prayer to the entertainment of appeal and submits that he would be satisfied, if the respondents are directed to entertain the appeal preferred by the petitioner. He relies upon judgment passed by this Court in **CWP-19029-**

2021, titled as *Aarcity Builders Private Limited vs. Union of India and others* dated 09.12.2021, wherein it has been held that:-

“3. xx xx the respondents themselves realized that GST being a new Act and the taxpayers are not familiar with the procedure and introduced various Amnesty Schemes for waiver of penalty or late fee or even extended time limit for filing applications.

4. The first notification was issued on 23.04.2019 (Annexure P-6), called the Central Goods and Services Tax (Fifth Removal of Difficulties) Order 2019, as per which it was noticed that a large number of registrations have been cancelled under sub-section (2) of section 29 of the CGST Act by the proper officer by serving notices as per clause (c) and (d) of sub-section (1) of section 169 of the CGST Act and the period of thirty days provided for revocation of cancellation order in sub-section (1) of section 30 of the CGST Act etc., are unable to get their cancellation of registration revoked despite having fulfilled all the requirements for revocation of cancellation of registration. It further noticed that GST being a new Act, tax-payers were not familiar with the manner of service of notice by e-mail or making available at portal in comparison to earlier regime where manual service of notice was provided. Realizing the difficulties owing to aforesaid facts in implementing Section 30 by way of aforesaid order dated 23.04.2019, proviso to Section 30 of the Central Goods and Services Tax Act, 2017 was inserted to the following effect:-

“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.”

5. As a result, a registered person against whom order was passed under Section 29 upto 31.03.2019 was allowed to file application for revocation of cancellation of the registration under Section 30 upto 22.07.2019.

6. It is relevant to quote Section 30 of the CGST Act for ready reference :-

“30. Revocation of cancellation of registration.-

(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.

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).

(2) The proper officer may, in such 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.”

7. Since, the difficulties still were not been overcome, a fresh notification was issued on 25.06.2020 (Annexure P-7), wherein it was 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 and where cancellation order was passed upto 12.06.2020, 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.

8. It must be mentioned here that around this time the country was affected by the Coronavirus pandemic and ultimately the respondents issued Notification No. 34/2021 dated 29.08.2021 (Annexure P-10), whereby in modification of the earlier notifications, the Government on the recommendations of the council notified that, where a registration has been cancelled and the time limit for making application for revocation of registration falls during the period 01.03.2020 to 31.08.2020, the time limit for making application shall be extended upto 30th day of September 2021.

9. Learned counsel for the petitioners contends that from the conjoint reading of the notifications, they were entitled for the extended period of limitation and thus could file the application under Section 30 of the Act for revocation of the cancellation of registration upto 30th day of September 2021.

10. In reply, respondents No.1, 3 and 5 have taken the stand that this notification of 29.08.2021 applied only to those cases where the cancellation orders were passed from 01.03.2020 to 31.08.2020.

11. The contention of learned counsel for the petitioner is that this is an erroneous reading of the notification. The notification No.34 of 2021 dated 29.08.2021 is reproduced hereinbelow:-

“NOTIFICATION
New Delhi, the 29th August, 2021
No. 34/2021-Central Tax

GSR, 600(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), *videnumber* 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 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 (e) 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 up to the 30th day of September, 2021.

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

RAJEEV RANIAN, Under Secy.”

12. In our considered opinion, the interpretation sought to be placed by learned counsel appearing for respondents is unduly restricted. It cannot be lost site of that this notification was issued in view of the Covid pandemic, wherein even the Supreme Court had passed a blanket order of extending the period of limitation. Once the petitioners had already been granted benefit of the notifications dated 23.04.2019 (Annexure P-6), dated 25.06.2020 (Annexure P-7) and dated 29.08.2021 (Annexure P-10), the time limit for making such application should have extended up to the 30th day of September, 2021.”

5. Learned State counsel is not in a position to dispute the proposition of law laid down in Arcity Builders Private Limited case (supra). We must add herein that it is not a case where a vested right has accrued in any of the parties by efflux of time. Thus, to hold that the plea of limitation would have an effect to defeat the right to livelihood vested in the petitioner, shall be against the spirit of Constitution of India.

6. In the circumstances, the present petition is allowed. It is directed that in case, the petitioner now moves an application/appeal for revocation of cancellation (if necessary, manually) within a period of 30 days from the date of receipt of certified copy of this order, the same would be deemed to be within limitation and would be decided on merits, in accordance with law.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

26.05.2022

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No