

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11265 of 2022**

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ATLAFBHAI RAJABALI DOSANI, PROP. OF M/S GURUKRUPA
ENTERPRISE

Versus

SUPERINTENDENT, GHATAK 82(AMRELI), RAGNE 19, DIVISION 9

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Appearance:

HIREN J TRIVEDI(8808) for the Petitioner(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2

PRIYANK P LODHA(7852) for the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 30/11/2022

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

- 1 By way of the present petition, the petitioner seeks to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking to quash and set aside the order dated 31.01.2022 passed by the Commissioner (Appeals), GST & Excise and order dated 18.03.2021 passed by Superintendent, Ghatak 82, Range-19, Division-9 passed under section 29(2) of the Central Goods & Services Act, 2017 ("the Act" for short), so also the cancellation of

registration of show cause notice dated 22.06.2020 issued under Rule 22 of the Central Goods & Services Rules.

2 The petitioner is a contractor engaged in providing construction services registered under the provisions of section 12 of the Act. It is his case that since he was out of business, the return after September, 2018 could not be filed. The person engaged by the petitioner also was under the impression that since outward supply is zero, there was no need for filing the return.

2.1 He was served with the show cause notice on 22.06.2020 under Rule 22 read with section 29(2) (c) of the Act to show cause as to why the registration be not cancelled, as he did not furnish the return for continuously six months' period. The show cause notice was received on the portal. However, erstwhile consultant of the petitioner did not inform the petitioner of the same and he left the assignment around the same

time for exploring better and other opportunities. The petitioner's registration number was cancelled on 18.03.2021 with effect from the very date.

2.2 The petitioner preferred the appeal before respondent No.2 on 19.11.2021 under section 107 of the Act, where he had tendered written submissions and personal hearing also was made available to him through the video conference on 22.12.2021. The appeal was disposed of on 31.01.2022 with observation that it was obligatory on the part of the appellant to file all returns relating to the period in question upto the date of cancellation of registration. The petitioner has already filed the return starting from September, 2018 to March, 2021 along with the requisite late fees. By self-assessment, he has also paid the challans of Rs.2,94,520/- in March, 2022. He also made a representation on 19.04.2022 for restoration of the registration

number on the ground that all the returns have been already filed. However, as no heed was paid, he is before this Court seeking to question and challenge the section by filing following prayers:

“15. In the premises aforesaid, the petitioner most humbly and respectfully prays that:

(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, orders or directios to quash and set aside order passed by the appellate authority dated 31.01.2022 (at Annexure-E) as well as order dated 18.03.2021 (at Annexure-C) canceling the registration certificate of the petitioner as well as show cause notice dated 22.06.2020 (at Annexure-B);

(B) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, orders or directions directing the respondents to forthwith restore the registration certificate of the petitioner;

(C) During the pendency and final disposal of the present petition YOUR LORDSHIPS may be pleased to stay operation, implementation and execution of order dated 18.03.2021 (at Annexure C) and further be pleased to direct respondents to forthwith restore the registration certificate of the petitioner;

(D) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case.”

3 This Court issued the notice and affidavit-in-reply is filed by one Mr. Anil Pandole, Assistant Commissioner, CGST Division-III. He has emphatically justified as to why GST registration

of the petitioner has been canceled and that, according to him, is in accordance with the due procedure and following the measure of natural justice. He did not file the GST returns continuously for the period of 30 months. Moreover, the show cause notice issued to him on 22.06.2020 was not responded nor did he file any return in response to the same and, hence, his registration was cancelled. He also preferred the appeal and the same was rejected on 31.01.2022 on merits and, hence, he does not have any legitimate ground to sustain this petition. Relying on some of the provisions of the law, it is urged that the petition deserves dismissal.

- 4 In affidavit-in-rejoinder the petitioner has reiterated the details largely of the memo of petition.
- 5 We have heard extensively Mr.Hiren Trivedi, learned advocate for the petitioner, who has argued along the line of the memo of the petition

and has urged that there is a keen urge on the part of the petitioner to get the registration revoked. After self-assessing, the petitioner has paid the amount of taxes and penalty and has also undertaken that whatever may be assessed by the authority, he shall be ready to also pay the same. Moreover, the consultant had not intimated him and that resulted into his not filing the returns. He has pleaded the Court to quash and set aside the order in original and the order of the appellate authority.

- 6 Mr. Priyank Lodha, learned Standing Counsel appearing for the respondent has vehemently submitted that if the petitioner is keen to continue his business, he ought to have been more vigilant. Not only there was no return filed, but, he has also not responded to the show cause notice issued nor has he filed any written submissions to the notice and both the authorities have concurrently held against him.

He has also shown his apprehension that if the assessee is permitted to be lethargic in filing this and is permitted to also wake up from the slumber after a long time, it may prove to be deleterious for the system itself.

7 On hearing both the sides and also on considering the material on the record, we need to make a specific mention that the order for cancellation of registration dated 22.06.2020 is quite cryptic. It hardly gives any detail, which is otherwise necessary. The effective date of registration is 18.03.2021. It is understandable that the tax payer has not responded to the cancellation proceedings initiated by the respondent nor had he filed his due GST returns and the GSTIN, therefore, was cancelled under section 29(2) of the CGST Act. Considering the fact that there are no returns filed, we are not dilating this issue.

8 As has been noted that from the month of September, 2018, the petitioner has not filed his

return and his registration has been cancelled in the month of March, 2021, the adjudicating authority has power to recover the Government dues upto the date of cancellation of registration.

- 9 The petitioner has already filed the returns from September, 2018 till March, 2021. correspondingly, the challan of the late fee totalling to Rs.2.94 lakhs (rounded off) has been deposited by him after self-assessing himself. The petitioner has also pressed into service the decision of this Court in the case of ***Tahura Enterprise vs. Union of India, 2022 (4) TMI 751***, where similar issue had arisen in which Central Board of Indirect Taxes and Customs had extended the time limit for revocation of cancellation during the Covid and the registration certificate, which was cancelled on account of non-filing of the return, had been revoked by this Court by certain directions. It was again the case where a person trading in the business of iron

and steel scrap registered under the GST Act had not filed the returns nor had he made a full payment of the taxes due. The Court, after taking into consideration the period of Covid and also bearing in mind the extension of the time period by the Apex Court during the Covid-19 pandemic, had permitted the restoration of the registration by extending the time period and has also further directed him to continue his business by registration of certificate to have been restored. Relevant paragraphs are reproduced as under:

“ANALYSIS:-

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is that whether the writ-applicants are entitled to seek any relief as prayed for.

8. Indisputably, the cancellation of registration was on the ground of non-filing of returns by the writ-applicants. The impugned order cancelling the registration came to be passed on 10.07.2019. The writ-applicants preferred an application before the appellate authority for revocation of cancellation of registration, but such application was not entertained on the ground that the same was time barred.

9. We take notice of the fact that the Central Board of Indirect Taxes and Customs extended the time limit for filing application for revocation of cancellation of registration and the limitation for all the orders passed on or before 12.06.2020 was to effectively commence from 31.08.2020. As the application filed by the writapplicants for revocation of

cancellation of registration was looked into by a quasi-judicial authority, the order of the Supreme Court extending the period of limitation in view of the Covid-19 Pandemic would apply and in such circumstances, the limitation in accordance with the order passed by the Central Board of Indirect Taxes and Customs could be said to have been extended.

10. Indisputably, the application requesting for restoration of registration was filed in July 2021 i.e. during the period when the order of the Supreme Court extending the limitation was in operation. More importantly, the writ-applicants have paid the requisite amount towards tax on the basis of self assessed liability on 06.09.2021. Since the registration of certificate of the writapplicants came to be cancelled solely on the ground of non-filing of the returns, which was on account of non-payment of tax and the writ-applicants now having paid such outstanding tax, the registration certificate of the writ-applicants should be ordered to be restored so that they are able to continue with their business.

11. In view of the aforesaid, the impugned order dated 10.07.2019 cancelling the registration certificate is hereby quashed and set aside. The respondents are directed to forthwith restore the registration certificate of the writ-applicants under the provisions of the G.S.T. Act.

- 10 Noticing the fact that the two grounds in the instant case have been putforth before this Court, firstly, the zero supply leading the petitioner to believe that he was not required to file the returns and secondly that his consultant had not advised him correctly both of which led to non-filing of the return, which now has been already filed. He has made payment of taxes with an undertaking of paying further taxes and to fulfill other legal

obligations, subject to assessment being completed by the authority concerned.

- 11 We could notice that his non-filing of the GSTR-1 is one issue which reiteratively learned Standing Counsel has raised before us. Surprisingly when, it is an admitted fact that once having missed, the same cannot be done unless the cancellation of registration is revoked and the assessee is given an access to the portal. This, according to the learned Standing Counsel is necessary for the authority concerned to compare it with the return and adjudicate properly. Indisputably, the petitioner has ensured to also file the same for the period from March, 2018 to the year 2021 and till today. He has also ensured to furnish undertaking for the liability, if there arises any under the law. Under the circumstances, when all kinds of readiness is expressed, there is no reason as to why this Court should not permit at this stage, filing of GSTR-1. It is not only not

going to prejudice the interest of revenue, but, on the contrary, would facilitate the process of adjudication with all the datas made available online.

- 12 It is for the period of pandemic which must not be lost sight of even though thankfully it is over by now and, therefore, the issue of limitation which the Apex Court had considered for extending the limitation shall also come to the rescue of the petitioner. Apt would be refer to the last such order passed by the Apex Court in the case of Re: Cognizance for Extension of Limitation passed in MCA No.665 of 2021 in SMW(c) No.3 of 2020 which extended limitation in all matters:

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

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during

the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of 5 proceedings.

IV. The Government of India shall amend the guidelines for containment zones, to state. "Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

- 13 Moreover, the petitioner appears to be someone, who is keen to continue his business and the State's obligation is to ensure the implementation of the law, but at the same time not to thwart, in any manner, the business prospects of the citizens and, therefore, acceding to the request,

we are required to allow this petition quashing and setting aside the order of the appellate authority dated 31.01.2022 as well as order dated 18.03.2021 canceling the registration of the certificate of the petitioner and also the show cause notice dated 22.06.2020. The petitioner since has already paid the outstanding taxes, the penalty to the tune of Rs.2,94,520/- and the same being by self-assessment, he shall also file an undertaking before this Court to fulfill his obligations once the assessment is completed in eight weeks.

- 14 In view of the aforesaid, the order of cancellation of registration is quashed and set aside dated 18.03.2021 along with the order dated 31.01.2021. The respondent is directed to forthwith restore the registration of the petitioner. He shall also file his GSTR-1 within 15 days of the restoration. The authority, thereafter, in six

weeks' period, shall complete the assessment part. The petitioner shall cooperate in the process. Petition is disposed of in the above terms.

(MS. SONIA GOKANI, J.)

(MAUNA M. BHATT,J)

SUDHIR

