Tvl. Suguna Cutpiece Center & Batch vs. Appellate Deputy Commissioner (ST)(GST) & Others

Whether GST registrations cancelled under Section 29(2)(c) of CGST/TNGST Acts for non-filing of returns for a continuous period of six months can be restored by the High Court under Article 226 of the Constitution, even where the statutory period of limit

Date of Order: January 31, 2022
Case Law No: GIB-MHC-2022-03
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

BACKGROUND

A batch of 27 Writ Petitions was filed by various small traders and businesspersons whose GST registrations were cancelled under Section 29(2)(c) of the CGST/TNGST Acts for non-filing of returns for a continuous period of six months. Show Cause Notices in prescribed form were issued to all petitioners and cancellation orders were passed after personal hearing opportunities. The cancellation orders ranged from the year 2018 to 2019. Some petitioners directly challenged the cancellation orders, while others challenged orders of Appellate Commissioners rejecting their appeals as time-barred, and a few challenged rejection of revocation applications. The Government had provided multiple amnesty opportunities through Order No.01/2020-Central Tax dated 25.06.2020 (for cancellations up to 12.06.2020) and Notification No.34/2021-Central Tax dated 29.08.2021 (extending deadline to 30.09.2021), but none of the petitioners availed these in time. The Appellate Commissioners correctly rejected all belated appeals as beyond the condonable period under Section 107 of the respective GST Acts.

FACTS

All the petitioners had failed to file their GST returns for a continuous period of six months, resulting in cancellation of their registrations. After cancellation, they neither filed applications for revocation under Section 30 of the Act within 30 days, nor did they avail the extended amnesty opportunities granted by the Government on the recommendations of the GST Council to revive their registrations. When some of them filed appeals before Appellate Commissioners under Section 107 of the

CGST/TNGST Acts, those appeals were rejected as beyond the condonable period of limitation — the delays ranging from 11 months to over 2 years. The Appellate Commissioners, being statutory authorities, had no jurisdiction to condone delay beyond the maximum period prescribed under Section 107. Several petitioners also pointed to the Supreme Court's COVID-19 limitation extension orders, CBIC Circular No.157/13/2021-GST dated 20.07.2021, Circular No.158/14/2021-GST dated 06.09.2021, and Notification No.34/2021-Central Tax dated 29.08.2021. One petitioner specifically raised an issue about the GST portal architecture not permitting filing of revocation applications despite dues being paid. The Court noted that while the Appellate Authorities rightly rejected the petitions under the statute, there was an overwhelming case for restoring the registrations in exercise of the extraordinary writ jurisdiction under Article 226.

COURT OBSERVATIONS (Verbatim)

"*The law on the limitation has been well settled by the Hon'ble Supreme Court. In this connection, a reference is invited to the decision of the Hon'ble Supreme Court in M/s. Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and Others, (2008) 3 SCC 70, wherein, it has been held that statutory appeal filed beyond the statutory period for condonation of delay under Section 35 of the Central Excise Act, 1944 cannot be condoned. This position of law applies to the facts of these cases.*"

"*As original or as appellate authority exercising power under the respective enactments, quasi judicial officers were bound by the provisions of the Act and the limitation under it, they have acted in accordance with law. They cannot look beyond the limitations prescribed under provisions of the Act. Therefore, no fault can be attributed to their action.*"

"*the provisions of the Goods and Services Tax Act, 2017 cannot be interpreted in such a manner, so as to debar an assessee, either from obtaining registration or reviving the lapsed/cancelled registration as such an interpretation would be not only contrary to the Article 19(1)(g) of the Constitution of India but also in violation of Article 14 and Article 21 of the Constitution of India.*"

"*In my view, no useful purpose will be served by keeping these petitioners out of the bounds of GST regime under the respective GST enactments other than to allow further leakage of the revenue and to isolate these petitioners from the main stream contrary to the objects of the respective GST enactments.*"

"*The purpose of GST registration is only to ensure just tax gets collected on supplies of goods or service or both and is paid to the exchequer. Keeping these petitioners outside the bounds of the GST regime is a self defeating move as no tax will get paid on the supplies of these petitioners.*"

"*The provisions of the GST enactments cannot be interpreted so as to deny the right to carry on*

Trade and Commerce to a citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of the defect in the scheme of the GST enactments. The right to carry on trade or profession also cannot be curtailed. Only reasonable restriction can be imposed. To deny such rights would militate against their rights under Article 14, read with Article 19(1)(g) and Article 21 of the Constitution of India."

"*This is a fit case for exercising the power under Article 226 of the Constitution of India in favour of the petitioners by quashing the impugned orders and to grant consequential relief to the petitioners. By doing so, the Court is effectuating the object under the GST enactment of levying and collecting just tax from every assessee who either supplies goods or service. Legitimate Trade and Commerce by every supplier should be allowed to be carried on subject to payment of tax and statutory compliance.*"

"*These petitioners deserve a chance and therefore should be allowed to revive their registration so that they can proceed to regularize the defaults.*"

FINAL VERDICT

All 27 Writ Petitions were **allowed** subject to conditions. The petitioners were directed to file all pending returns and pay the defaulted tax, interest, fine and fee within **45 days** from receipt of the order, without adjusting from ITC. On compliance, the **GST registrations shall stand revived forthwith**. The respondents were directed to instruct GSTN to make necessary changes in the portal architecture within 30 days to enable filings. ITC, if any, to be utilized only after scrutiny and approval by competent authorities.

IN FAVOUR OF ASSESSEE

CASES REFERRED BY THE COURT

#	Case Name	Citation
1	M/s. Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur & Others	(2008) 3 SCC 70 (Supreme Court)
2	P.R. Mani Electronics vs. Union of India and Others	2020 SCC OnLine Mad 8053 (Madras HC, Division Bench)
3	Tvl. Sunpenta Mining Service Pvt. Ltd. vs. Asst. Commissioner (ST), Salem	W.P.Nos.20083 & 20086 of 2021 dated 22.09.2021 (Madras HC)
4	Suresh Trading Corporation vs. Asst. Commissioner (Circle) of SGST, Coimbatore II	W.P.No.21109 of 2021 dated 01.10.2021 (Madras HC)
5	Mafatlal Industries Ltd. vs. Union of India	(1997) 5 SCC 536 (Supreme Court)

#	Case Name	Citation
6	In Re: Cognizance for Extension of Limitation	2021 SCC OnLine SC 947 (Supreme Court) — M.A. No.665/2021 in SMW(C) No.3/2020