

IN THE HIGH COURT OF JUDICATURE AT MADRAS

07.12.2021, 09.12.2021, 13.12.2021,
Reserved On 15.12.2021, 10.01.2022 & 19.01.2022
Pronounced On 31.01.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.25048, 25877, 12738, 17237, 20722, 20945, 21237,
21315, 23374, 24967, 25118, 25146, 25147, 25156 25678,
12683, 12685, 25026, 26026, 25705, 26187, 26190 & 14508
of 2021 and W.P.No.14241 of 2021 and W.P.Nos.507, 126
& 128 of 2022
and
W.M.P.Nos.26384, 26385, 27347, 27349, 27350, 13533,
18248, 18249, 21976, 26283, 26284, 27119, 27121 13471,
13472, 13473, 13475, 13476, 26355 , 27474, 27476 , 27394,
27395, 15403, 27636, 27638, 27638, 27642 & 27644 of 2021
and W.M.P.No.17715 of 2020 and W.M.P.Nos.132, 134 &
142 of 2022

(Through Video Conferencing)

W.P.No.25048 of 2021

Tvl. Suguna Cutpiece Center,
4-111-B Kolathur, Kolathur, (Post),
Salem – 636 403,
Rep by its Authorized Signature,
K.Jayaraman

... Petitioner

Vs.

and etc. batch

1.The Appellate Deputy
Commissioner (ST) (GST),
Salem and Erode,
Commercial Taxes Building,
Pitchards Road, Salem – 7.

2.The Assistant Commissioner (Circle),
Salem Bazaar.

...

Respondents

Writ Petition filed under Article 226 of the Constitution
of India,
for issuance of a Writ of Certiorari, to call for the records relating
to the
order of the first respondent in Appeal No.238/2021 dated 23.09.2021
and quash the same.

For Petitioner in : Mr.B.Ramesh Kumar
W.P.Nos.25048,
25877, 17237, 24967
& 26026 of 2021

For Petitioner in : Mr.Adithya Reddy
W.P.No.12738 of
2021 and
W.P.No.14241 of 2020

For Petitioner in : Dr.A.Thiyagarajan,
W.P.No.20722 of 2021 Senior Counsel
for Mr.S.Karunakaran

For Petitioner in : Mr.K.M.Malarmannan
W.P.Nos.20945,
21237 & 23374 of
2021

For Petitioner in : Mr.S.Patrick

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W.P.Nos.25048 of

2021 and etc. batch

W.P.No.21315 of 2021

For Petitioner in : Mr.M.Elango
W.P.No.25118 of 2021

For Petitioner in : Mr.Ashish
W.P.Nos.25146,
25147 & 25156 of
2021

For Petitioner in : Mr.R.Senniappan
W.P.Nos.25678,
25705, 26187 &
26190 of 2021 and
W.P.Nos.126 & 128 of
2022

For Petitioner in : Mr.P.Rajkumar
W.P.Nos.12683 &
12685 of 2021

For Petitioner in : Mr.C.Subramanian
W.P.No.25056 of 2021

For Petitioner in : Mr.V.Kumaresan
W.P.No.507 of 2022 for Mr.K.Murukesan

For Petitioner in : Mr.P.V.Sudakar
W.P.No.14508 of 2021

For respondents in
: Mr.N.R.R.Arun Natarajan
W.P.Nos.25048, Special Government
12738, 17237, 20722, Pleader

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2021 and etc. batch W.P.Nos.25048 of

20945, 21237, 21315,

24967, 25118, 23374,
25146, 25147, 25156,
25678, 12683, 12685,
25026, 26026, 25705,
of 2021 and in
W.P.No.507 of 2022

COMMON ORDER

By this common order, all the Writ Petitions are being disposed. Since a common order is being passed in all these Writ Petitions, I have summarized the submissions of the learned counsel for the respective petitioners and the learned counsel for the respondents in the succeeding paragraphs upto paragraph No.149. Discussion for _____ <https://www.mhc.tn.gov.in/judis> Page No 4 of 129 W.P.Nos.25048 of 2021 and etc. batch arriving at the conclusion starts from paragraph No.150 onwards.

2. These Writ Petitions pertain to the challenge to the cancellation of GST Registrations issued to the petitioners under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017. Some of the petitioners have filed these Writ Petitions against the order of the cancellation of GST registration, while, some of the petitioners have filed these Writ Petitions against the order passed in the appeals filed against the order of the cancellation of GST registration. Details and prayer of the Writ Petitions are given as follows:-

Sl. No.	W.P.No.	Prayer
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Against the order of the cancellation of Registration 1 12738/2021 For issuance of a Writ of Certiorarified Mandamus:-

i. to call for the records of the order of the respondent dated 30.09.2019 in Reference No.ZA3309191059645, ii. to quash the same, and iii. to direct the respondent to receive the petitioner's application for revocation of cancellation of its registration under Section 30(1) of the State Goods and Services Act, 2017.

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W.P.Nos.25048 of 2021

Sl. No.	W.P.No.	Prayer
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2. 21315/2021 For issuance of a Writ of Mandamus, to direct the respondent to revoke the cancellation of the petitioner's GST Registration in GSTIN/UIN:33ABKFS8764L1ZF by considering the petitioner's representation dated

02.09.2021.

3. 25678/2021 For issuance of a Writ of Certiorari:-

i. to call for the records on the files of the respondent in Reference Number ZA330219009465O dated 04.02.2019, and ii. to quash the same.

4 25026/2021 For issuance of a Writ of Certiorari:-

i. to call for the records of respondent in his proceedings in Reference No.ZA331019014593A dated 04.10.2019, and ii. to quash the same.

5 20722/2021 For issuance of a Writ of Certiorarified Mandamus:-

i. to call for the records relating to the order passed by the first respondent in Application Reference Number (ARN):

AA331018053413N (Ref.

No.ZA331118050192Z) dated 16.11.2018, ii. to quash the same, and iii. to restore the registration of the petitioner in GSTIN/Unique ID:33AAFPE7865CIZY.

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W.P.Nos.25048 of

2021 and etc. batch

Sl. No.	W.P.No.	Prayer
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6 12683/2021 For issuance of a Writ of Certiorarified
Mandamus: -

i. to call for the impugned proceedings of the first respondent in Reference No.ZA331119015921T, ii. to quash the impugned order dated 05.11.2019, and iii. to direct the first respondent to restore the GST Registration Certificate of the petitioner in GSTIN/UIN:33AABFL7771Q1ZQ.

7 25705/2021 For issuance of a Writ of Certiorari:-

i. to call for the records on the files of the respondent in Reference No.ZA331019054883G dated 16.10.2019, and ii. to quash the same.

8 26190/2021 For issuance of Writ of Certiorari:-

i. to call for the records on the files of the first respondent in Reference No.ZA331019082695B dated 22.10.2019, and ii. to quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

9 126/2022 For issuance of a Writ of Certiorari:-

i. to call for the records on the files of the first respondent in Reference No.ZA330619013613P dated 07.06.2019, and _____
<https://www.mhc.tn.gov.in/judis> Page No 7 of 129 W.P.Nos.25048 of 2021 and etc. batch Sl. W.P.No. Prayer No. ii. to quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

10 14508/2021 For issuance of a Writ of Certiorari:-

i. to call for the records of the respondent in his proceedings in Reference No.ZA331019114070A, and ii. to quash the order dated 31.10.2019 passed therein.

Against the order passed in appeal filed against the order of cancellation of Registration of GST Certificate on account of the appeal being time barred 11 25048/2021 For issuance of a Writ of Certiorari:-

i. to call for the records relating to the order of the first respondent in Appeal No.238/2021 dated 23.09.2021, and ii. to quash the same.

12 25877/2021 For issuance of a Writ of Certiorari:-

i. to call for the records relating to the order of the first respondent in Order-in-Appeal No.143/2021 dated 27.09.2021, and ii. to quash the same.

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W.P.Nos.25048

of 2021 and etc. batch

Sl. W.P.No.
No.

Prayer

13 17237/2021 For issuance of a Writ of Certiorari:-

i. to call for the records relating to the order of the first respondent in Appeal No.104/2021 dated 29.07.2021, and ii. to quash the same.

14 23374/2021 For issuance of a Writ of Certiorarified Mandamus:-

i. to call for the records on the file of the first respondent with regard to the impugned order in R.C.No.1243/2021/A1 dated 16.08.2021, ii. to quash the same as illegal and arbitrary, and iii. to restore the petitioner's Registration GSTIN / 33DHKP-S2662N2ZPm so as to enable the petitioner for filing return.

15 24967/2021 For issuance of a Writ of Certiorari:-

i. to call for the records relating to the order of the first respondent in Appeal No.212/2021 dated 02.09.2021, and ii. to quash the same.

16 25118/2021 For issuance of a Writ of Certiorarified Mandamus:-

i. to call for the records relating to the order passed by the first respondent in Appeal No.263/2021 dated 03.11.2021, ii. to quash the same, and iii. to direct the first respondent to entertain the appeal dated 14.10.2021 filed by the petitioner and dispose the same on merits.

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W.P.Nos.25048 of 2021 and etc. batch

Sl. No.	W.P.No.	Prayer
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17 12685/2021 For issuance of a Writ of Certiorarified Mandamus:-

i. to call for the impugned proceedings of the second respondent in Appeal No.GST/141/2020, ii. to quash the impugned order dated 23.04.2021, and iii. to direct the first respondent to restore the GST Registration Certificate of the petitioner in GSTIN/UIN:33AABFL7771Q1ZQ.

18 26026/2021 For issuance of a Writ of Certiorari:-

i. to call for the records relating to the order of the first respondent Order-In-Appeal No.409/2021 dated 22.09.2021, and ii. to quash the same.

19 507/2022 For issuance of a Writ of Certiorari:-

i. to call for the records relating to the impugned order passed by the second respondent in Appeal No.426 of 2021 dated 01.11.2021, and ii. to quash the same.

20 128/2022 For issuance of a Writ of Certiorari:-

i. to call for the records on the files of the second respondent in Appeal No.157 of 2021 dated 17.08.2021, and _____ <https://www.mhc.tn.gov.in/judis> Page No 10 of 129 W.P.Nos.25048 of 2021 and etc. batch Sl. W.P.No. Prayer No. ii. to quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

Against the rejection of the application filed for appeal against the order of cancellation of GST Registration 21 21237/2021 For issuance of a Writ of Certiorarified Mandamus:-

i. to call for the records on the file of the first respondent with regard to the impugned order passed in R.C.No.349/2021/A1 dated 29.03.2021, ii. to quash the same as illegal and arbitrary, and iii. to consequently direct the respondents to restore the petitioner's Registration No.GSTIN / 33FHS / PS6754P2Z2.

22 26187/2021 For issuance of a Writ of Certiorari:-

i. to call for the records on the files of the second respondent in TNGST M.P.No.181/2021 dated 27.07.2021, and ii. to quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

23 20945/2021 For issuance of a Writ of Certiorarified Mandamus:-

i. to call for the records on the file of the first respondent with regard to the impugned order passed in R.C.No.875/2021/A1 dated 06.09.2021, ii. to quash the same as illegal and arbitrary, and iii. to direct the respondents to restore the _____ <https://www.mhc.tn.gov.in/judis> Page No 11 of 129 W.P.Nos.25048 of 2021 and etc. batch Sl. W.P.No. Prayer No. petitioner's Registration No.GSTIN/33AAAC-

Q3485A1ZU so as to enable the petitioner for filing returns.

24 25146/2021 For issuance of a Writ of Certiorarified Mandamus:-

25147/2021 i. to quash the impugned orders in 25156/2021 Rc.No.1290/2021/A1, Rc.No.1289/2021/A1 & Rc.No.1288/2021/A1 all dated 27.08.2021 respectively passed by the respondent, and ii. to direct the respondent to admit the appeals of the petitioners.

Against the rejection order of application for revocation of cancellation

25 14241/2020 For issuance of a Writ of Certiorarified Mandamus:-

i. to call for the records of the impugned proceedings of the respondent dated 07.09.2020 in Ref. No.ZA330920020379P, ii. to quash the same, and iii. to consequently direct the respondent to restore the petitioner's GST Registration.

3. Before passing the order of cancellation of GST Registration, the respondents have issued Show Cause Notices which have culminated in the impugned orders. Details of the Show Cause Notice, Order-in-Original and Appeal are given as follows:-

_____ <https://www.mhc.tn.gov.in/judis> Page No 12 of 129
W.P.Nos.25048 of 2021 and etc. batch Sl. W.P.No. Date of SCN Order of Rejection of
Order in No. Cancellation of appeal being time Appeal GST barred Registration 1
25048/2021 24.07.2019 19.08.2019 - 23.09.2021 2 25678/2021 12.12.2018
04.02.2019 - - 3 21315/2021 17.12.2018 01.02.2019 - - 4 12738/2021 10.09.2019
30.09.2019 - - 5 17237/2021 25.09.2019 17.10.2019 - 29.07.2021 6 25877/2021
24.08.2019 05.11.2019 - 27.09.2021 7 25026/2021 01.08.2019 04.10.2019 - - 8
23374/2021 07.01.2019 22.01.2019 16.08.2021 - 9 20945/2021 14.08.2018
29.08.2018 06.09.2021 - 10 20722/2021 26.10.2018 16.11.2018 30.04.2021 - 11
25146/2021 13.05.2019 27.05.2019 27.08.2021 - 12 25147/2021 16.10.2019
30.10.2019 27.08.2021 - 13 25156/2021 16.10.2019 30.10.2019 27.08.2021 - 14
25118/2021 10.10.2019 30.10.2021 - 03.11.2021 15 24967/2021 19.12.2018
07.02.2019 - 02.09.2021 16 21237/2021 19.09.2018 08.10.2018 29.03.2021 - 17
12683/2021 - -

18 12685/2021 21.10.2019 05.11.2019 23.04.2021 19 25705/2021 01.10.2019
16.10.2019 - 20 26190/2021 - -

21 26187/2021 12.09.2019 22.10.2019 27.07.2021 - 22 26026/2021 19.12.2018
07.02.2019 - 22.09.2021 23 507/2022 11.12.2018 11.12.2018 - 01.11.2021 24
14241/2020 18.10.2019 13.11.2019 07.09.2020 -

26 128/2022 04.04.2019 07.06.2019 - 17.08.2021 27 14508/2021 21.10.2019 31.10.2019 28.06.2021
- _____ <https://www.mhc.tn.gov.in/judis> Page No 13 of 129 W.P.Nos.25048 of
2021 and etc. batch

4. In W.P.No.25048 of 2021, the petitioner has challenged the impugned order dated 23.09.2021 passed by the first respondent viz., Appellate Deputy Commissioner, under Section 107(1) of the TNGST Act, 2017 in Appeal No.238 of 2021 filed by the petitioner against the order of cancellation of GST registration dated 19.08.2019 passed by the second respondent viz., Assistant Commissioner, canceling the registration of the petitioner under Section 29 of the TNGST Act, 2017.

5. Mr.B.RamesshKumaar, the learned counsel of the petitioner in W.P.No.25048 of 2021 submits that the petitioner was issued with Show Cause Notice dated 24.07.2019, wherein the petitioner was

called upon to show cause as to why the registration granted to the petitioner should not be cancelled on the ground that the petitioner has not filed the returns for a continuous period of six months. The petitioner was directed to appear for personal hearing on 31.07.2019.

6. He further submitted that thereafter, by an order dated 19.08.2019, the second respondent cancelled the GST registration of the petitioner. In these circumstances, the petitioner preferred an appeal _____ <https://www.mhc.tn.gov.in/judis> Page No 14 of 129 W.P.Nos.25048 of 2021 and etc. batch before the Appellate Deputy Commissioner on 02.08.2021 which was admittedly beyond the period of limitation prescribed under Section 107 of the TNGST Act, 2017. The first respondent dismissed the appeal on the ground of limitation.

7. Opposing the prayer in W.P.No.25048 of 2021, Mr.N.R.R.Arun Natarajan, the learned Special Government Pleader appearing on behalf of the respondents submits that the petitioner has not opted any of the concession granted by the Central Board of Indirect Taxes and Customs vide Notification No.1 of 2020, dated 25.06.2020 or further extension granted on 29.08.2021 vide Notification No.34 of 2021 – Central Tax, issued by the Department of Revenue, Central Board of Indirect Taxes and Customs.

8. The learned Special Government Pleader would further submit that though the petitioner has belatedly filed the returns and paid the tax, the appeal was beyond the limitation. It is submitted that though the petitioner has paid the tax and filed the returns belatedly, nevertheless the petitioner having not opted for filing suitable application for revocation of _____ <https://www.mhc.tn.gov.in/judis> Page No 15 of 129 W.P.Nos.25048 of 2021 and etc. batch cancellation of registration, the relief sought for in this Writ Petition cannot be granted. It is further submitted that the order passed by this Court dated 22.09.2021 in W.P.Nos.20083 & 20086 of 2021 will not apply to the facts of the present case.

9. In W.P.No.25877 of 2021, the petitioner has challenged the order dated 27.09.2021 passed by the Appellate Commissioner in Appeal No.143 of 2021 filed by the petitioner against the order dated 27.09.2021 cancelling the CGST registration of the petitioner.

10. Mr.B.Ramesh Kumaar, the learned counsel for the petitioner in W.P.No.25877 of 2021 submits that the petitioner was issued with a Show Cause Notice dated 24.08.2019 under Section 29 of CGST Act, 2017 on the ground that the petitioner has not filed his returns for a continuous period of 6 months and that the petitioner was directed to appear before the second respondent for a personal hearing on 05.09.2019.

11. He further submitted that the second respondent has cancelled _____ <https://www.mhc.tn.gov.in/judis> Page No 16 of 129 W.P.Nos.25048 of 2021 and etc. batch the registration vide order dated 05.11.2019. Thereafter, the petitioner preferred an appeal before the Appellate Commissioner viz., the first respondent on 31.08.2021.

12. It is submitted that the first respondent/Appellate Commissioner had erred in dismissing the appeal filed by the petitioner only on the ground of limitation, even though the first respondent has

accepted that the petitioner has filed the GSTR3B/GSTR1 Returns for the period upto the date of cancellation of Registration and paid appropriate tax with late fee.

13. The learned counsel for the petitioner further submitted that there are intervening Government Orders vide Notification No.1 of 2020, dated 25.06.2020 issued by the Central Board of Indirect Taxes and Customs and Notification No.34 of 2021 – Central Tax, issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 29.08.2021.

_____ <https://www.mhc.tn.gov.in/judis> Page No 17 of 129 W.P.Nos.25048 of 2021 and etc. batch

14. That apart, it is submitted that the respondents have also clarified the position in terms of Circular No.158/14/2021 – GST issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 06.09.2021 and therefore, there is no merits in the impugned order.

15. Opposing the prayer in W.P.No.25877 of 2021, Mr.A.P.Srinivas, learned Senior Standing Counsel appearing on behalf of the respondents would submit that the petitioner has filed the appeal belatedly and therefore, the appeal has been correctly rejected by the first respondent.

16. That apart, it is submitted that the petitioner has also not opted for revocation of cancellation of registration in terms of the amnesty scheme and relaxation given by the Government. It is therefore submitted that the Writ Petition filed by the petitioner is liable to be dismissed.
_____ <https://www.mhc.tn.gov.in/judis> Page No 18 of 129 W.P.Nos.25048 of 2021 and etc. batch

17. The learned Senior Standing Counsel would also submit that the order of the learned Single Judge in W.P.Nos.20083 & 20086 of 2021 dated 22.09.2021 is not relevant to the facts of the present case. Further, he would submit that the Hon'ble Division Bench of this Court had also dismissed the plea of few dealers who had approached the authorities belatedly. In this connection, a reference was made to the order passed by the Hon'ble First Bench of this Court in the case of P.R.Mani Electronics Vs. Union of India and others, 2020 SCC OnLine Mad 8053.

18. The learned Senior Standing Counsel for the respondents would submit that a review petition is also pending before the Hon'ble First Bench against the aforesaid order, nevertheless as the law stands today, as held by the Hon'ble First Bench, the Writ Petition filed by the petitioner has to be dismissed.

19. In W.P.No.12738 of 2021, the petitioner has challenged the impugned order dated 30.09.2019 passed by the respondent revoking the GST registration of the petitioner under Section 29 of the CGST Act, _____ <https://www.mhc.tn.gov.in/judis> Page No 19 of 129 W.P.Nos.25048 of 2021 and etc. batch 2017 and TNGST Act, 2017. The impugned order dated 10.09.2019 preceded the Show Cause Notice dated 10.09.2019, to which, the petitioner has also replied on 20.09.2019.

20. It is the specific case of the petitioner in W.P.No.12738 of 2021 that the petitioner was a dealer registered under the provisions of the erstwhile Tamil Nadu Value Added Tax Act,2006 and that the petitioner was liable to pay tax as works contractor.

21. It is the further case of the petitioner that the petitioner's employer had failed to make payment to the petitioner and therefore, during the month of January 2019, the petitioner did not file request returns under the provisions of the TNGST Act and CGST Act, 2017.

22. Mr.Adithya Reddy, the learned counsel for the petitioner in W.P.No.12738 of 2021 submits that after the impugned order was passed by the respondent on 30.09.2019, the petitioner has attempted to pay the disputed tax and late fee charges, in all amounting to Rs.49,58,029/-. It is further submitted that at the time when the petitioner made the payments, _____
<https://www.mhc.tn.gov.in/judis> Page No 20 of 129 W.P.Nos.25048 of 2021 and etc. batch there was no proposal for extending the period prescribed under Section 29 r/w 34 of Revocation of the cancellation of license either by the Central Government or by the State Government.

23. The learned counsel for the petitioner in W.P.No.12738 of 2021 further submits that the Central Board of Indirect Taxes and Customs issued a Notification No.1 of 2020, dated 25.06.2020 in terms of which all the assesseees who were in default of filing returns and whose registrations have been cancelled upto 12th June 2020 were made eligible to file such application for revocation by 31st August 2020.

24. It is the specific case of the petitioner in W.P.No.12738 of 2021 that a part of the aforesaid amount of Rs.49,58,029/- was paid prior to the issuance of the aforesaid notification dated 25.06.2020 and partly after another extension was granted vide Notification No.34 of 2021 – Central Tax, issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 29.08.2021.

25. The learned counsel for the petitioner in W.P.No.12738 of _____
<https://www.mhc.tn.gov.in/judis> Page No 21 of 129 W.P.Nos.25048 of 2021 and etc. batch 2021 further submits that under the above notifications, a fresh period of limitation was given to the persons whose registration has been cancelled under clause (b) or (c) of sub-section (2) of Section 29 of the Act and the time limit for making an application for revocation of cancellation of registration under sub-section (1) of Section 30 of the Act fell during the period starting from 1st day of March 2020 to 31st day of August 2021 and the time limit for making such application stood extended upto 30 th September 2021.

26. The learned counsel for the petitioner further submits that by virtue of these notifications, though some of the dealers were able to get their registration restored, the petitioner was unable to restore the registration.

27. The learned counsel for the petitioner has referred to the decision of the Hon'ble Supreme Court dated 08.03.2021 passed in the wake of outbreak of Covid-19 Pandemic and submits that the Hon'ble Supreme Court vide the said order had clarified as follows:

_____ <https://www.mhc.tn.gov.in/judis> Page No 22 of 129
W.P.Nos.25048 of 2021 and etc. batch “We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measure to minimize the hardship of litigant- public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.”

28. Mr.Adithya Reddy, the learned counsel for the petitioner in W.P.No.12738 of 2021 further submits that to give effect to the above decision of the Hon'ble Supreme Court which was again extended vide another order of the Hon'ble Supreme Court on 23.09.2021, the Central Board of Indirect Taxes and Customs has issued Circular No.157/13/2021-GST, the Central Board of Indirect Taxes and Customs, GST Policy Wing, dated 20.07.2021 and in paragraph 4.(b), it has been stated as follows:

_____ <https://www.mhc.tn.gov.in/judis> Page No 23 of 129
W.P.Nos.25048 of 2021 and etc. batch “4. On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorised as follows:-

(a).

(b). Quasi-Judicial proceedings by tax authorities:-

The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may interalia include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc., Similarly, appeals which are filed and are pending, can continue to be heard and disposed off and the same will be governed by those extensions of time granted by the statutes or notifications, if any.”

29. The learned counsel for the petitioner in W.P.No.12738 of 2021 further submits that in a somewhat identical situation where one of the assessee had preferred a Writ Petition and challenged the order of the Appellate Commissioner under Section 107 of the GST Act, 2017 and this Court intervened by its order dated 22.09.2021 in W.P.Nos.20083 & 20086 of 2021 and disposed the Writ Petitions with the following observations:-

_____ <https://www.mhc.tn.gov.in/judis> Page No 24 of 129
W.P.Nos.25048 of 2021 and etc. batch “11.In the light of the narrative thus far, the following order is passed:

(a) The second impugned order i.e., order made by the second respondent in Appeal No.102 of 2021 being order dated 22.07.2021 is set aside solely to facilitate the writ petitioner to apply for revocation under Section 30 of TN Goods and ST Act;

(b) As the order of the Appellate Authority i.e., second respondent is set aside solely to facilitate the writ petitioner to get the advantage of extended time frame seeking revocation, it is made clear (though obvious) that no view or opinion on merits of the matter has been expressed qua second impugned order;

(c) It is open to the writ petitioner to apply for revocation under Section 30 of TN Goods and ST Act on or before 30.09.2021 and if the writ petitioner chooses to do so, a proper officer shall consider the revocation application on its own merits and in accordance with law and make an order as expeditiously as possible;

(d) For the purpose of abundant clarity, it is made clear that there is no expression of opinion regarding second registration obtained by the writ petitioner and that is also left open to the proper officer to decide in the course of taking a call on the application for revocation when made;”

30. Opposing the prayer in W.P.No.12738 of 2021, Mr.N.R.R.Arun Natarajan, the learned Special Government Pleader _____ <https://www.mhc.tn.gov.in/judis> Page No 25 of 129 W.P.Nos.25048 of 2021 and etc. batch appearing on behalf of the respondents submits that the extension which was granted earlier by the Central Board of Indirect Taxes and Customs vide Notification No.1 of 2020, dated 25.06.2020 specifically applied to all those defaulters whose registrations had been revoked upto 12 th June 2020 and that the time was granted upto 31st August 2020 for filing appropriate application for revocation of cancellation of registration under Sub-Section (1) of Section 30 of the respective GST Act, 2017.

31. It is further submitted that the petitioner ought to have not only paid the tax on time, but also filed the returns in time to avail the benefit of the Notification No.1 of 2020 – Central Tax, dated 25.06.2020.

32. The learned Special Government Pleader for the respondent further submits that the subsequent extension of time vide Notification No.34 of 2021 – Central Tax, issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 29.08.2021 amending/modifying the Notification No.35/2020 – Central Tax, dated 03.04.2020 would apply only to those defaulters whose time for making an application for revocation of cancellation of registration under Sub-_____ <https://www.mhc.tn.gov.in/judis> Page No 26 of 129 W.P.Nos.25048 of 2021 and etc. batch Section (1) of Section 30 of the Act fell during the period between 1 st day of March 2020 to 31st day of March 2021 and therefore, the benefit of the above notification was not available to the petitioner.

33. The learned Special Government Pleader appearing on behalf of the respondent also referred to Rule 23 of the CGST Rules, 2017 and submitted that as per proviso to Rule 23 of CGST Rules, no

application for revocation shall be filed if the registration has been cancelled for failure of the registered person to furnish returns unless such returns are furnished and any amount due as tax in terms of such returns are paid along with any amount payable towards interest, penalty and late fee in respect of the said returns. It is further submitted that as per the second proviso, the time that was extended was 30 days and therefore, there is no merits in this Writ Petition.

34. By way of a re-joinder, Mr.Adithya Reddy, the learned counsel for the petitioner in W.P.No.12738 of 2021 submits that the difficulty is on the account of the architecture of the web portal of the respondent as the petitioner has paid the amount but the web portal does not open up to _____
<https://www.mhc.tn.gov.in/judis> Page No 27 of 129 W.P.Nos.25048 of 2021 and etc. batch entertain the application filed under Section 30(1) of the respective GST Act for revocation of the registration r/w Rule 22 of CGST Rules.

35. Mr.Adithya Reddy, the learned counsel for the petitioner in W.P.No.12738 of 2021 has drawn the attention of this Court to Circular No.158/14/2021 – GST issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 06.09.2021 wherein it has been clarified as follows:

“3.Application covered under the scope of the said notification 3.1.....

(i). ...

(ii).

(iii). ...

(iv).

(v). application for revocation of cancellation of registration was filed, the proper officer rejected the application and the appeal has been decided against the taxpayer-

In such cases, taxpayer may file a fresh application for revocation and the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.”
_____ <https://www.mhc.tn.gov.in/judis> Page No 28 of 129 W.P.Nos.25048 of 2021 and etc. batch

36. In W.P.No.17237 of 2021, the petitioner has challenged the impugned order dated 29.07.2021 passed by the first respondent viz., Appellate Commissioner made in Appeal No.104 of 2021 under Section 107(1) of the TNGST Act, 2017.

37. It is the specific case of the petitioner in W.P.No.17237 of 2021 that the petitioner's registration was cancelled by the second respondent vide order dated 17.10.2019 pursuant to the issuance of show cause notice dated 25.09.2019.

38. Aggrieved by the aforesaid order, the petitioner filed an appeal before the first respondent/Appellate Commissioner under Section 107 of TNGST Act, 2017 which came to be dismissed vide the impugned order on the ground that the petition has been filed belatedly.

39. Mr.B.RamesshKumaar, the learned counsel for the petitioner in W.P.No.17237 of 2021 submits that during the pendency of Appeal before the Appellate Commissioner, several orders came to be passed relaxing the limitation for filing appropriate applications and the benefit of those _____ <https://www.mhc.tn.gov.in/judis> Page No 29 of 129 W.P.Nos.25048 of 2021 and etc. batch circulars/orders of the Government should be extended to the petitioner.

40. Opposing the prayer in W.P.No.17237 of 2021, Mr.N.R.R.Arun Natarajan, the learned Special Government Pleader appearing on behalf of the respondents submits that pursuant to the notification issued by the Central Board of Indirect Taxes and Customs vide Notification No.1 of 2020, dated 25.06.2020, the time limit for filing appropriate application for revocation stood extended subject to compliance of other requirements as contemplated under Rule 22 of the TNGST Rules, 2017 by 30 days from 31st August 2020.

41. It is further submitted that the petitioner in W.P.No.17237 of 2021 failed to avail the opportunity of the aforesaid order issued under Section 17(2) of CGST Act, 2017 and therefore, the petitioner cannot seek any benefit on account of the above Government Orders.

42. It is also submitted that the subsequent relaxations in terms of Notification No.34 of 2021 – Central Tax, issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 29.08.2021 _____ <https://www.mhc.tn.gov.in/judis> Page No 30 of 129 W.P.Nos.25048 of 2021 and etc. batch also will not apply as the petitioner has not filed an application for revocation in time and therefore, the case of the petitioner would not come within its purview.

43. Assisting the Court, Mr.Adithya Reddy, the learned counsel for the petitioner in W.P.Nos.12738 of 2021 & 14241 of 2020 would submit in a somewhat identical situation where one of the assessee had preferred a Writ Petition and challenged the order of the Appellate Commissioner under Section 107 of the GST Act, 2017, this Court intervened by its order dated 22.09.2021 in W.P.Nos.20083 & 20086 of 2021.

44. In W.P.No.20722 of 2021, the petitioner has challenged the impugned dated 16.11.2021 passed by the respondent, for cancellation of GST Registration in respect of Show Cause Notice dated 26.10.2018.

45. Dr.A.Thiyagarajan, the learned Senior Counsel for the petitioner submits that the respondent issued a Show Cause Notice dated 26.10.2018 to the petitioner under Section 29(2)(c) of TNGST ACT, i.e. for non-filing of returns for a continuous period of six months. The _____ <https://www.mhc.tn.gov.in/judis> Page No 31 of 129 W.P.Nos.25048 of 2021 and etc. batch petitioner filed a reply to the Show Cause Notice vide letter dated 08.11.2018 stating that there was no sufficient transaction, for filing of returns. Thereafter, the respondent has passed an order of

cancellation of GST registration dated 16.11.2021.

46. Aggrieved by the said order, the petitioner filed an appeal, under Section 107 of GST Act read with Rule 108(1) of GST. However as per Section 107 of GST Act, appeal has to be filed within the period prescribed from the date of order and if there is sufficient cause for delay in filing of appeal, then additional period of one month may be granted.

47. Dr.A.Thiyagarajan, the Senior Counsel for the petitioner further submits that while filing the appeal, the petitioner was directed to deposit a sum of Rs.1,40,000/- on 16.04.2021. It is submitted that the petitioner has remitted a sum of Rs. 1,64,484/- as on 16.04.2021.

48. Dr.A.Thiyagarajan, the Senior Counsel also submits that there is a delay in filing of the appeal [Delay of 11 months and. 24 days]. The appellate authority Vide order Rc.No: 440/2021 by a memo dated _____ <https://www.mhc.tn.gov.in/judis> Page No 32 of 129 W.P.Nos.25048 of 2021 and etc. batch 30.04.2021 however dismissed the appeal. The reason for dismissal was the appellate authority has no power to condone delay in filing the appeal. The petitioner cannot make an appeal further, as there is no Appellate Tribunal constituted under this act.

49. In W.P.No.20945 of 2021, the petitioner has challenged the impugned order dated 06.09.2021 passed by the first respondent viz., Appellate Commissioner rejecting the appeal preferred by the petitioner against the order passed by the second respondent dated 29.08.2018 by which the registration of the petitioner was cancelled under the provisions of the TNGST Act, 2017.

50. The petitioner in W.P.No.20945 of 2021 has filed an appeal against the aforesaid order of the second respondent dated 29.08.2018 on 25.08.2021 pursuant to which the impugned order dated 06.09.2021 came to be passed.

51. Mr.K.M.Malarmannan, the learned counsel for the petitioner in _____ <https://www.mhc.tn.gov.in/judis> Page No 33 of 129 W.P.Nos.25048 of 2021 and etc. batch W.P.No.20945 of 2021 submits that the petitioner was entitled for revocation of the order cancelling the registration in terms of Section 30(1) of the TNGST Act, 2017.

52. Opposing the prayer in W.P.No.20945 of 2021, Mr.N.R.R.Arun Natarajan, the learned Special Government Pleader appearing on behalf of the respondents would submit that the petitioner has not attempted to file appropriate application by uploading the returns and paying the taxes on time. Therefore, the present Writ Petition is liable to be dismissed.

53. It is to be noted that the Appellate Commissioner has dismissed the appeal preferred by the petitioner with the following observations:-

“(iv). In the appellants case, the order of cancellation of registration has been communicated to the appellants on 29.08.2018 through online. The appellants had time till 28.11.2018 to file appeal against the order of cancellation before this forum. Further as per Section 107(4) of the TNGST Act, 2017 the appellant also had one

month time for sufficient cause from non-presenting the appeal within the period of three months as _____ <https://www.mhc.tn.gov.in/judis> Page No 34 of 129 W.P.Nos.25048 of 2021 and etc. batch per Section 107(1) of the TNGST Act. Such time of further one month expired on 28.12.2018.”

54. In W.P.No.21237 of 2021, the petitioner has challenged the impugned order dated 29.03.2021 passed by the first respondent viz., Appellate Commissioner rejecting the appeal preferred by the petitioner against the order passed by the second respondent dated 08.10.2018 by which the registration of the petitioner was cancelled under the provisions of the TNGST Act, 2017.

55. Mr.K.M.Malarmannan, the learned counsel for the petitioner in W.P.No.21237 of 2021 submits that the petitioner has filed an appeal against the aforesaid order of the second respondent dated 08.10.2018 on 24.03.2021 pursuant to which the impugned order dated 29.03.2021 came to be passed. It is the case of the petitioner that the petitioner was entitled for revocation of the order cancelling the registration in terms of Section 30(1) of the TNGST Act, 2017.

56. Opposing the prayer in W.P.No.21237 of 2021, _____ <https://www.mhc.tn.gov.in/judis> Page No 35 of 129 W.P.Nos.25048 of 2021 and etc. batch Mr.N.R.R.Arun Natarajan, the learned Special Government Pleader appearing on behalf of the respondents would submit that the petitioner has not attempted to file appropriate application by uploading the returns and paying the taxes on time. Therefore, the present Writ Petition is liable to be dismissed.

57. It is also to be noted that the Appellate Commissioner has dismissed the appeal preferred by the petitioner in in W.P.No.21237 of 2021 with the following observations:

“(iii). In the appellants case, the order of cancellation of registration has been communicated to the appellants on 08.10.2018 through online. The appellants had time till 07.01.2019 to file appeal against the order of cancellation before this forum. Further If appellant satisfies those conditions in the Section 107(4), further period of one month would also be expired on 07.02.2019.

(iv). The appellant has filed the appeal before this forum only on 25.03.2021 by a further delay of 2 Years One Month Nine Days which is beyond the statutory period for filing the appeal.”

58. W.P.No.21315 of 2021 has been filed seeking for a writ of _____ <https://www.mhc.tn.gov.in/judis> Page No 36 of 129 W.P.Nos.25048 of 2021 and etc. batch mandamus directing the respondent to revoke the cancellation of the Petitioner's GST Registration in GSTIN/UIN : 33ABKFS8764LIZF by considering the Petitioner's Representation dated 02.09.2021.

59. The facts on record indicates that the petitioner in W.P.No.21315 of 2021 was issued with a show cause notice dated 17.12.2018 to show cause as to why the petitioner's registration should not be cancelled for not having filed the returns for a continuous period of 6 months in terms of Section 29

of the TNGST Act, 2017 r/w Rule 22 of TNGST Rules.

60. The petitioner in W.P.No.21315 of 2021 appears to have filed his reply on 02.09.2021 and explained that the petitioner could not file his returns from May 2018 and pursuant to the same he was issued with notice dated 17.12.2018 asking him to appear before the respondent on 24.12.2018. However, in the beginning of December, the petitioner fell ill and he could not carry on his business and incurred financial losses and therefore, the petitioner could not appear for personal hearing. _____ <https://www.mhc.tn.gov.in/judis> Page No 37 of 129 W.P.Nos.25048 of 2021 and etc. batch

61. Mr.S.Patrick, the learned counsel for the petitioner in W.P.No.21315 of 2021 submits that the registration of the petitioner was cancelled on 01.02.2019 and therefore, if a chance is given to the petitioner, the petitioner will be able to explain as to why the petitioner could not file his returns in time.

62. Further, in paragraph 9 of the affidavit filed in support of the W.P.No.21315 of 2021, the petitioner has stated as follows:-

“9. I state that there are no pending GST dues from before the date of cancellation of the GST Registration. I also submit that I have duly filed my GST returns until February, 2019, after which I was unable to file my returns/pay due to the cancellation of the GST Registration. I undertake to file my returns and pay all of my due and any late fees within a period of 4 weeks or any time period as directed by this Hon'ble Court.”

63. Opposing the prayer in W.P.No.21315 of 2021, Mr.N.R.R.Arun Natarajan, the learned Special Government Pleader appearing on behalf of the respondent would submit that the petitioner _____ <https://www.mhc.tn.gov.in/judis> Page No 38 of 129 W.P.Nos.25048 of 2021 and etc. batch should have either filed an application for revocation of cancellation of registration under Section 30 of the TNGST Act, 2017 or the petitioner should have filed an appeal before the Appellate Commissioner under Section 107 of the TNGST Act, 2017 and therefore, there is no merits in this Writ Petition.

64. It is further submitted that without challenging the order cancelling the registration, it is not open to the petitioner to seek for mandamus and therefore, on this ground also, the Writ Petition is liable to be dismissed.

65. In W.P.No.23374 of 2021, the petitioner has challenged the impugned order passed by the first respondent on 16.08.2021 by rejecting the appeal preferred by the petitioner against the order passed by the second respondent dated 22.01.2019 cancelling the GST registration of the petitioner under Section 29 of TNGST Act, 2017.

66. It is the specific case of the petitioner in W.P.No.23374 of 2021 that the petitioner had replied to the show cause notice dated 07.01.2019, _____ <https://www.mhc.tn.gov.in/judis>

Page No 39 of 129 W.P.Nos.25048 of 2021 and etc. batch however the second respondent had passed an order on 22.01.2019 cancelling the registration of the petitioner.

67. Mr.K.M.Malarmannan, the learned counsel for the petitioner in W.P.No.23374 of 2021 would submit that the petitioner had preferred an appeal before the Appellate Commissioner, however the Appellate Commissioner has rejected the Appeal on the ground of limitation.

68. Opposing the prayer in W.P.No.23374 of 2021, the learned Special Government Pleader Mr.N.R.R.Arun Natarajan submits that there is no scope for extending the period of limitation for filing the appeal and therefore, the Appellate Commissioner has rightly passed the order and therefore, the Writ Petition is liable to be dismissed.

69. It is further submitted that the petitioner has also not filed an application for Revocation of the cancellation of license under Section 30(1) of the TNGST Act and therefore, the petitioner is not entitled for any relief. It is also further submitted that the petitioner is also not entitled to any of the relaxations given by the Central Board of Indirect Taxes and _____
<https://www.mhc.tn.gov.in/judis> Page No 40 of 129 W.P.Nos.25048 of 2021 and etc. batch Customs vide Notification No.1 of 2020, dated 25.06.2020 and Notification No.34 of 2021 – Central Tax, issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 29.08.2021.

70. The learned Special Government Pleader further submits that there is no clarity as to whether the petitioner has filed the returns while filing an appeal before the Appellate Commissioner and therefore, for the reasons stated above, the Writ Petition is liable to be dismissed.

71. In W.P.No.24967 of 2021, the petitioner has challenged the impugned order passed by the first respondent on 02.09.2021 by rejecting the appeal preferred by the petitioner against the order passed by the second respondent dated 07.02.2019 cancelling the GST registration of the petitioner under Section 29 of TNGST Act, 2017.

72. It is the specific case of the petitioner in W.P.No.24967 of 2021 that after the issuance of show cause notice dated 19.12.2018 calling upon the petitioner to reply for the same, the second respondent had _____ <https://www.mhc.tn.gov.in/judis> Page No 41 of 129 W.P.Nos.25048 of 2021 and etc. batch passed an order on 07.02.2019 cancelling the registration of the petitioner.

73. Mr.B.Ramesh Kumaar, the learned counsel for the petitioner in W.P.No.24967 of 2021 would submit that as the show cause notice was sent through online and the petitioner saw the notice belatedly, the petitioner could not reply within the time limit and therefore, the petitioner had preferred an appeal before the Appellate Commissioner. However, the Appellate Commissioner has rejected the Appeal on the ground of limitation.

74. Opposing the prayer in W.P.No.24967 of 2021, the learned Special Government Pleader Mr.N.R.R.Arun Natarajan submits that there is no scope for extending the period of limitation for

filing the appeal and therefore, the Appellate Commissioner has rightly passed the order and therefore, the Writ Petition is liable to be dismissed. It is further submitted that the petitioner has also not filed an application for Revocation of the cancellation of license under Section 30(1) of the TNGST Act and therefore, the petitioner is not entitled for any relief. _____
<https://www.mhc.tn.gov.in/judis> Page No 42 of 129 W.P.Nos.25048 of 2021 and etc. batch

75. It is also further submitted that the petitioner is also not entitled to any of the relaxations given by the Central Board of Indirect Taxes and Customs vide Notification No.1 of 2020, dated 25.06.2020 and Notification No.34 of 2021 – Central Tax, issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 29.08.2021.

76. The learned Special Government Pleader further submits that there is no clarity as to whether the petitioner has filed the returns while filing an appeal before the Appellate Commissioner and therefore, for the reasons stated above, the Writ Petition is liable to be dismissed.

77. In W.P.No.25118 of 2021, the petitioner has challenged the impugned order passed by the first respondent dated 03.11.2021 rejecting the appeal preferred by the petitioner against the order dated 30.10.2019 passed by the second respondent cancelling the registration of the _____
<https://www.mhc.tn.gov.in/judis> Page No 43 of 129 W.P.Nos.25048 of 2021 and etc. batch petitioner under Section 29 of the TNGST Act, 2017.

78. Mr.M.Elango, the learned counsel for the petitioner in W.P.No.25118 of 2021 submits that though the order has been cancelled, the petitioner is entitled for benefit of the Notification No.34 of 2021 – Central Tax, issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 29.08.2021 and therefore, the Writ Petition deserves to be allowed.

79. Opposing the prayer in W.P.No.25118 of 2021, the learned Special Government Pleader Mr.N.R.R.Arun Natarajan appearing on behalf of the respondent would submit that there is no error in the impugned order in as much as the petition itself was filed belatedly and as an Appellate Commissioner, the first respondent cannot be expected to extend the time period. It is further submitted that the petitioner was not vigilant enough to opt for any relaxation in terms of Notification No.1 of 2020, dated 25.06.2020 issued by the Central Board of Indirect Taxes and Customs and Circular No.158/14/2021 – GST issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, _____
<https://www.mhc.tn.gov.in/judis> Page No 44 of 129 W.P.Nos.25048 of 2021 and etc. batch dated 06.09.2021. Thus, there is no merit in the case of the petitioner and the Writ Petition is liable to be dismissed.

80. In W.P.No.25146 of 2021, the petitioner has challenged the impugned order dated 27.08.2021 passed by the Respondent for Revocation of cancellation of GST Registration in respect of Show Cause Notice dated 13.05.2019. The Respondent issued a notice dated 13.05.2019 to the petitioner u/s 29(2)(c) of TNGST Act , i.e. for non- filing of return for a period of Six months. The petitioner filed a reply to the Show Cause Notice vide letter dated 21.05.2019. Thereafter, the respondent had passed an order for cancellation of GST registration dated 27.05.2019.

81. Mr.Ashish, the learned counsel for the petitioner in W.P.No.25146 of 2021 submits that aggrieved by the order of the respondent, the petitioner filed an application, against cancellation of the registration praying for Revocation of cancellation of registration which was numbered as Rc.No.1290/2021/A1.

82. He further submits that though all tax returns and dues had _____
<https://www.mhc.tn.gov.in/judis> Page No 45 of 129 W.P.Nos.25048 of 2021 and etc. batch been filed the said appeal was dismissed by the respondent on the ground that there was delay in filing appeal (appeal was filed by delay of two years and three months). The maximum limitation period is 3 Months and (additional 1 Month may be granted) as per Section 107 of GST Act, 2017.

83. In W.P.No.25147 of 2021, the petitioner has challenged the impugned order dated 27.08.2021 passed by the Respondent for Revocation of cancellation of GST Registration in respect of Show Cause Notice dated 16.10.2019. The Respondent issued a notice dated 16.10.2019 to the petitioner u/s 29(2)(c) of TNGST Act , i.e. for non- filing of return for a period of Six months. The petitioner filed a reply to the Show Cause Notice vide letter dated 26.10.2019. Thereafter, the respondent had passed an order for cancellation of GST registration dated 27.05.2019.

84. Mr.Ashish, the learned counsel for the petitioner in W.P.No.25147 of 2021 submits that the petitioner, aggrieved by the order of the respondent, filed an application, against cancellation of the _____
<https://www.mhc.tn.gov.in/judis> Page No 46 of 129 W.P.Nos.25048 of 2021 and etc. batch registration praying for Revocation of cancellation of registration which was numbered as Rc.No.1289/2021/A1. Though all tax returns and dues had been filed the said appeal was dismissed by the respondent on the ground that there was delay in filing appeal (appeal was filed by delay of One Year and Nine Months). The maximum limitation period is 3 Months and (additional 1 Month may be granted) as per Section 107 of GST Act, 2017.

85. In W.P.No.25156 of 2021, the petitioner has challenged the impugned order dated 27.08.2021 passed by the respondent for revocation of cancellation of GST Registration in respect of Show Cause Notice dated 16.10.2019.

86. Mr.Ashish, the learned counsel for the petitioner in W.P.No.25147 of 2021 submits that the Respondent issued a notice dated 16.10.2019 to the petitioner u/s 29(2)(c) of TNGST Act , i.e. for non- filing of return for a period of Six months. The petitioner filed a reply to the Show Cause Notice vide letter dated 26.10.2019. Thereafter, the respondent had passed an order for cancellation of GST registration dated _____
<https://www.mhc.tn.gov.in/judis> Page No 47 of 129 W.P.Nos.25048 of 2021 and etc. batch 27.05.2019.

87. He further submits that the petitioner, aggrieved by the order of the respondent, filed an application, against cancellation of the registration praying for Revocation of cancellation of registration which was numbered as Rc.No.1289/2021/A1. Though all tax returns and dues had been filed the said appeal was dismissed by the respondent on the ground that there was delay in filing appeal (appeal was filed by delay of One Year and Nine Months). The maximum limitation period is 3 Months and (additional 1 Month may be granted) as per Section 107 of GST Act, 2017.

88. In W.P.No.25678 of 2021, the petitioner has challenged the impugned order dated 04.02.2019 passed by the respondent revoking the GST registration of the petitioner under Section 29 of the TNGST Act, 2017.

89. It is the further case of the petitioner in W.P.No.25678 of 2021 that the petitioner has also paid the late fee of Rs.16,000/- for filing the _____ <https://www.mhc.tn.gov.in/judis> Page No 48 of 129 W.P.Nos.25048 of 2021 and etc. batch returns on 29.10.2021. It is further submitted that right after the inception of GST, the petitioner has been out of business and therefore, there is no tax liability and hence, the petitioner is only required to file NIL returns all through the period.

90. Mr.R.Senniappan, the learned counsel for the petitioner in W.P.No.25678 of 2021 submits that as against the impugned order dated 04.02.2019, the petitioner had filed an appeal before the Appellate Commissioner on 27.10.2021 which has not been taken up for disposal. The learned counsel would further submit that the time limit for filing an appeal stood extended vide the decision of the Hon'ble Supreme Court dated 08.03.2021 passed in the wake of outbreak of Covid-19 Pandemic and submits that the Hon'ble Supreme Court vide the said order had clarified as follows:

“We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measure to minimize the hardship of litigant- public in all the states. We, therefore, restore _____ <https://www.mhc.tn.gov.in/judis> Page No 49 of 129 W.P.Nos.25048 of 2021 and etc. batch the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.”

91. Thus, the learned counsel for the petitioner in W.P.No.25678 of 2021 submits that the appeal ought to have been taken up and disposed on merits.

92. Opposing the prayer in W.P.No.25678 of 2021, the learned Special Government Pleader appearing on behalf of the respondent would submit that the appeal apart from being time barred, the payment was also made by the petitioner after filing of the appeal on 29.10.2021 and therefore, on this ground also, the Writ Petition is liable to be dismissed.

93. In W.P.No.12683 of 2021, the petitioner has challenged the impugned order dated 05.11.2019 passed by the first respondent for cancellation of GST Registration in respect of Show Cause Notice dated 21.10.2019. The petitioner also prays to the Hon'ble Court to direct the _____ <https://www.mhc.tn.gov.in/judis> Page No 50 of 129 W.P.Nos.25048 of 2021 and etc. batch first respondent to restore

the GST registration certificate.

94. In W.P.No.12685 of 2021, the petitioner has challenged the impugned order dated 23.04.2021 passed by the second respondent in Appeal No.141 of 2020 filed against the order of cancellation of registration which has been impugned in above W.P.No.12683 of 2021.

95. Mr.P.Rajkumar, the learned counsel for the petitioner in W.P.No.12683 & 12685 of 2021 submits that the respondents issued a Show Cause Notice dated 21.10.2019 to the petitioner under Section 29(2)(c) of TNGST Act., i.e. for non-filing of returns for a continuous period of six months.

96. He further submits that the first respondent had granted seven days time for filing of objection and directed the petitioner to appear for personal hearing dated 23.10.2019. However the petitioner failed to mark his presence before the first respondent, for which the respondent passed an order dated 05.11.2019 cancelling the registration of the petitioner.

_____ <https://www.mhc.tn.gov.in/judis> Page No 51 of 129 W.P.Nos.25048 of 2021 and etc. batch

97. It is submitted that the petitioner having filed the returns for the Months of April 2019 to October 2019 and have paid necessary taxes on 09.03.2019, the petitioner tried to file an application for revocation of the registration certificate, but the said application was denied by the portal. So, the petitioner made a statutory appeal before the second respondent on 13.03.2021 challenging the order dated 05.11.2019 passed by the first respondent. The ground on which the petitioner filed an appeal is that, there are 100 workers employed and so if the registration is revoked the petitioner could restart the business and provide continued employment for them and also could generate revenue for the Government.

98. It is submitted that the second Respondent in Appeal No. 141 of 2020 has dismissed the appeal as time barred in terms of section 107 of the TNGST Act. The said order was passed on 23.04.2021 by the second respondent. The time to statutory appeal expired on 04.03.2021, and so the order dated 08.03.2020 passed by the Hon'ble Supreme Court in Suo- moto Writ Petition (civil) No.3 of 2020 does not apply to petitioner's case.

99. In W.P.No.25026 of 2021, the petitioner has challenged the _____ <https://www.mhc.tn.gov.in/judis> Page No 52 of 129 W.P.Nos.25048 of 2021 and etc. batch impugned order dated 04.10.2019 cancelling the registration of the petitioner on account of the petitioner's failure to file returns for a continuous period of six months. The impugned order of the respondent is challenged primarily on the ground that the show cause notice was issued on 01.08.2019 fixing the hearing on 02.08.2019, contrary to the provisions of the applicable GST Rules and Section 29 of the TNGST Act, 2017.

100. It is submitted that the petitioner in W.P.No.25026 of 2021 also appeared for personal hearing and filed his reply on 11.08.2019 and requested for time. However, without awaiting reply, the respondent proceeded to pass orders on 04.10.2019 and therefore, the petitioner is aggrieved by the aforesaid order.

101. Mr.C.Subramanian, the learned counsel for the petitioner in W.P.No.25026 of 2021 further submits that the petitioner is engaged in renting out immovable properties which is liable to tax under the provisions of Finance Act, 1994 and after the advent of GST from 01.07.2017, anomalous situation has arisen, as the petitioner still _____ <https://www.mhc.tn.gov.in/judis> Page No 53 of 129 W.P.Nos.25048 of 2021 and etc. batch continues to render service but is unable to pay the tax. It is further submitted that for the period upto default i.e., October 2019, the petitioner has also paid the tax and returns post facto and therefore, there should be an order for revoking the cancellation made by the respondent on 01.08.2019.

102. Opposing the prayer in W.P.No.25026 of 2021, Mr.N.R.R.Arun Natarajan, the learned Special Government Pleader appearing for the respondent submits that the petitioner has neither filed an appeal against the order dated 01.08.2019, cancelling his registration nor took any effective steps for revoking the cancellation of registration in terms of Section 30(1) of the TNGST Act, 2017 r/w Rule 22 of the TNGST Rules, 2017 and therefore, submits that the Writ Petition is devoid of merits and have to be dismissed.

103. By way of rejoinder, Mr.C.Subramanian, the learned counsel for the petitioner in W.P.No.25026 of 2021 submits that the Government has issued relaxation in terms of Notification No.1 of 2020, dated 25.06.2020 issued by the Central Board of Indirect Taxes and Customs _____ <https://www.mhc.tn.gov.in/judis> Page No 54 of 129 W.P.Nos.25048 of 2021 and etc. batch and Circular No.158/14/2021 – GST issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 06.09.2021 and those Orders/Circulars implementing the orders passed by the Hon'ble Supreme Court dated 08.03.2021 and 23.09.2021 ought to be applied to the facts of the case and accordingly, the time granted has to be extended.

104. The petitioner in W.P.No.14508 of 2021 had received a show cause notice dated 21.10.2019 in Form GST REG-17 to show cause as to why the GST Registration of the petitioner should not be cancelled. On account of the fact that the petitioner had failed to pay the tax to the account of the Central/State Government beyond a period of three months from the date of such payment becomes due. The petitioner was directed to file a reply within a period of seven days from the date of service of the aforesaid notice and directed to paid on 24.10.2019.

105. It is the case of the petitioner in W.P.No.14508 of 2021 that the respondent fix the personal hearing even before the petitioner could file a reply and thereafter proceeded to pass an order on 31.10.2019. _____ <https://www.mhc.tn.gov.in/judis> Page No 55 of 129 W.P.Nos.25048 of 2021 and etc. batch

106. Mr.P.V.Sudakar, the learned counsel for the petitioner in W.P.No.14508 of 2021 submits that the petitioner was entitled to avail the benefit of Order No.01/2020-Central Tax dated 25.06.2020

as per which the time stood extended or computing the limitation. In this case, the limitation would have expired on the 30 th day from 31.08.2020. It is further submitted that the Hon'ble Supreme Court has suo motu suspended the limitation by its order dated 08.03.2021 and previous order dated 23.03.2020.

107. Mr.P.V.Sudakar, the learned counsel for the petitioner in W.P.No.14508 of 2021 further submits that the grounds stated in the show cause notice dated 21.10.2019 is not filed under Section 29 of the respective GST Act.

108. Opposing the prayer in W.P.No.14508 of 2021, Ms.Amirta Poonkodi Dinakaran, the learned Government Advocate for the respondent submits that the petitioner is not entitled to challenge the impugned order. The petitioner was also filed an Appeal before the _____ <https://www.mhc.tn.gov.in/judis> Page No 56 of 129 W.P.Nos.25048 of 2021 and etc. batch Appellate Commissioner which has been rejected.

109. In W.P.No.126 of 2022, the petitioner has challenged the impugned order dated 07.06.2019 passed by the first respondent Assistant Commissioner(ST) cancelling the registration of the petitioner for failing to file returns for the period between July 2017 to October

110. In W.P.No.128 of 2022, the petitioner has challenged the impugned order dated 17.08.2021 passed by the second respondent in Appeal No.157 of 2021 filed by the petitioner against the order dated 07.06.2019, the cancellation order impugned in W.P.No.126 of 2022.

111. Mr.R.Senniappan, the learned counsel for the petitioner in W.P.Nos.126 & 128 of 2022 has placed reliance on the order passed by the learned Single Judge of this Court in the case of Tvl.Sunpenta Mining Service Private Limited, Salem Vs The Assistant Commissioner (ST), Salem and another, passed in W.P.Nos.20083 & 20086 of 2021 dated 22.09.2021.

_____ <https://www.mhc.tn.gov.in/judis> Page No 57 of 129 W.P.Nos.25048 of 2021 and etc. batch

112. Mr.Richardson Wilson, learned Additional Government Pleader takes notice on behalf of the respondents in W.P.Nos.126 & 128 of 2022.Opposing the prayer in W.P.Nos.126 & 128 of 2022, the learned Additional Government Pleader for the respondents submits that the decision of the Hon'ble Supreme Court suo motu extending the time filing the appeal and the limitation vide order dated 23.03.2020 and the subsequent enlargement of time is not applicable to the facts of the case inasmuch as the impugned order in W.P.No.126 of 2022 was passed long before the outbreak of Covid-19 pandemic and that the limitation for filing an appeal under Section 137 of the respective GST Acts and for revocation of the order cancelling the registration had expired and therefore submits that no case is made out for interference. It is the specific case as to whether the revenue stands to gain by cancelling the registration.

113. The learned Additional Government Pleader for the respondents submits that even though the Government is satisfactory with _____ <https://www.mhc.tn.gov.in/judis> Page No

58 of 129 W.P.Nos.25048 of 2021 and etc. batch the revenue, the clarification of the registration implies that persons whose registration has been cancelled cannot carry out the business supplying service with tax and the respective GST enactments.

114. Mr. Richardson Wilson, learned Additional Government Pleader also takes notice on behalf of the respondents in W.P.Nos.26187 & 26190 of 2021.

115. The petitioner in W.P.Nos.26187 & 26190 of 2021 had received a Show Cause Notice dated 12.09.2019 under Section 29 of the Tamil Nadu Goods and Service Tax Act, 2017 (hereinafter referred to as the TNGST Act) to show cause as to why the GST Registration of the petitioner should not be cancelled for not having filed the returns for a continuous period of six months. The petitioner appears to have replied to the same which culminated in an order dated 22.10.2019 of the first respondent herein.

116. The petitioner in W.P.Nos.26187 & 26190 of 2021 has an alternate remedy under Section 30 of the TNGST Act, 2017 for revocation _____ <https://www.mhc.tn.gov.in/judis> Page No 59 of 129 W.P.Nos.25048 of 2021 and etc. batch of the suspension order within the time stipulated under Section 30 of the TNGST Act, 2017 or in the alternative file an appeal within a period of thirty days under Section 117 of the TNGST Act, 2017.

117. Mr. P. Rajkumar, the learned counsel for the petitioner in W.P.Nos.26187 & 26190 of 2021 submits that the petitioner opted to file an appeal before the Appellate Commissioner on 20.07.2021 which has culminated in the impugned order of the second respondent Appellate Deputy Commissioner. The operative portion of the impugned order reads as under:-

“Tvl. Aurum Creamy Zone having office at 1335, Avinashi Road, Peelamedy, Coimbatore-04 is a registered dealer in the books of the Assistant Commissioner (ST) Peelamedy North Circle. The appellant Registration Certificate was cancelled on 22.10.2019 for non filing of monthly returns for continuous period of 6 months. Aggrieved against the above order, this appeal has been filed on 20.07.2021. The above appeal was taken for admission on 27.07.2021. During the hearing, the appellant reiterated the grounds mentioned in the Appeal filed. As per section 107(1) & (4) of the CGST/SGST Act an appeal to the 1st Appellate Authority has to be filed within 3 months from the date on which the said decision or order is communicated. If sufficient cause from presenting the appeal within the aforesaid period of 3 months is shown a further period of one month is allowed. In _____ <https://www.mhc.tn.gov.in/judis> Page No 60 of 129 W.P.Nos.25048 of 2021 and etc. batch this appeal 4 months (3 months + 1 month) time period ends on 22.02.2020 for the Registration Certificate cancelled date of 22.10.2019. Hence, the above appeal filed is time barred. Hence the above appeal petition is dismissed.”

118. The only ground on which the impugned order has been passed is that the appeal was filed beyond the time limit prescribed under Section 117 of the TNGST Act, 2017 for filing an appeal against the order dated 22.10.2019. The learned counsel for the petitioner would rely on the decision

of the Hon'ble Supreme Court dated 23.03.2020 modified and extended by the subsequent order dated 08.03.2021 and finally by another order dated 23.09.2021.

119. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader takes notice on behalf of the respondents in W.P.No.507 of 2022 reiterated the submissions already made in the batch.

120. In W.P.No.507 of 2022, the petitioner has challenged the impugned order of the Appellate Deputy Commissioner (ST)(GST) in Appeal No.426 of 2021 dated 01.11.2021. The petitioner is an _____ <https://www.mhc.tn.gov.in/judis> Page No 61 of 129 W.P.Nos.25048 of 2021 and etc. batch entrepreneur of the "Mahalakshmi Engineering" Company registered under the provisions of the GST Act, vide GSTIN/Temporary ID/UIN:

66AOLPV5995E2ZA

121. Mr.V.Kumaresan, the learned counsel for the petitioner in W.P.No.507 of 2022 submits that the petitioner had failed to file GST returns contemplated under the provisions of the GST enactments and therefore the first respondent had issued a Show Cause Notice dated 11.12.2018 for Cancellation of Registration (Form GST REG-17) called upon the petitioner to appear on 17.12.2018 at 12.00.p.m. before the first respondent.

122. However, the petitioner in W.P.No.507 of 2022 did not participate and therefore the Petitioner's Registration was cancelled with effect from 09.01.2019 vide order dated 09.01.2019 by the first respondent.

123. The petitioner in W.P.No.507 of 2022 appears to have filed a Writ Petition in W.P. (MD) Nos. 6245, 6247 and 6249 of 2021 which was _____ <https://www.mhc.tn.gov.in/judis> Page No 62 of 129 W.P.Nos.25048 of 2021 and etc. batch disposed by an order dated 19.07.2021. Thereafter, the petitioner in W.P.No.507 of 2022 preferred an appeal before the Appellate Authority on 31.07.2021 against order dated 11.12.2018 of the first respondent.

124. The second respondent had now passed the impugned order rejecting the appeal filed by the petitioner and therefore the option for revising the impugned order is struck down vide order dated 11.12.2018.

125. Opposing the prayer in W.P.No.507 of 2022, the learned Special Government Pleader for the respondents Mr.N.R.R.Arun Natarajan submits that the orders have cited by the learned counsel for the petitioner in this writ petition, which were passed by the respondents due to outbreak of Covid-19 Pandemic. It is submitted that the order of cancellation dated 09.01.2019 is long before the outbreak of Covid-19 Pandemic during March 2020. Therefore, there is no merit in W.P.No.507 of 2022

126. In W.P.No.25705 of 2021, the petitioner has challenged the impugned order dated 16.10.2019 passed by the respondent cancelling _____ <https://www.mhc.tn.gov.in/judis> Page No 63 of 129 W.P.Nos.25048 of 2021 and etc. batch the registration of the petitioner in respect of

the show cause notice dated 01.10.2019.

127. The petitioner in W.P.No.25705 of 2021 was issued with a Show Cause Notice dated 01.10.2019 and a reply was also filed by the petitioner on 16.10.2019. However, the impugned order records that the registration is being cancelled as the petitioner has not filed monthly returns for the past six months.

128. Appearing on behalf of the petitioner in W.P.No.25705 of 2021, Mr.R.Senniappan, the learned counsel would submit that the Government has issued relaxation in terms of Notification No.1 of 2020, dated 25.06.2020 issued by the Central Board of Indirect Taxes and Customs and Circular No.158/14/2021 – GST issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 06.09.2021 and those Orders/Circulars implementing the orders passed by the Hon'ble Supreme Court dated 08.03.2021 and 23.09.2021 ought to be applied to the facts of the case and accordingly, the relief sought for has to be granted.

_____ <https://www.mhc.tn.gov.in/judis> Page No 64 of 129 W.P.Nos.25048 of 2021 and etc. batch

129. The learned counsel for the petitioner in W.P.No.25705 of 2021 further submits that the petitioner is engaged in construction business and had no income and therefore, there is no tax liability. As far as returns are concerned, the petitioner has uploaded the returns and paid late fee of Rs.11,500/- and therefore, prays for quashing the impugned order and directing the respondent to restore the GST registration of the petitioner.

130. Opposing the prayer in W.P.No.25705 of 2021, the learned Special Government Pleader Mr.N.R.R.Arun Natarajan appearing on behalf of the respondent would submit that the affidavit filed by the petitioner makes it clear that the petitioner undertakes to file the returns with payment of tax as and when this Court directs to do so and therefore, as on date of the filing of this Writ Petition, the petitioner has not complied with the elementary requirements of either paying the tax or filing the returns.

_____ <https://www.mhc.tn.gov.in/judis> Page No 65 of 129 W.P.Nos.25048 of 2021 and etc. batch

131. It is further submitted that the fact that the petitioner has admitted the tax liability also shows that even as on date, the petitioner has not paid the tax. That apart, it is further submitted that the petitioner has alternate remedy by way of an appeal before the Appellate Commissioner under Section 107 of TNGST Act, 2017 which remedy the petitioner had failed to opt. The petitioner has also not opted to file an application for revocation of cancellation of registration under sub-section (1) of Section 30 of the Act and therefore, submits that the Writ Petition is devoid of merits.

132. By way of rejoinder, the learned counsel for the petitioner in W.P.No.25705 of 2021 submits that the petitioner has filed an appeal on 26.10.2021 and therefore, the submission made by the learned Special Government Pleader that the petitioner has not opt for filing an appeal cannot be

countenanced. Further, the learned counsel would submit that the petitioner is entitled for protection in terms of the decision of the Hon'ble Supreme Court dated 08.03.2021 and 23.09.2021. _____ <https://www.mhc.tn.gov.in/judis> Page No 66 of 129 W.P.Nos.25048 of 2021 and etc. batch

133. The learned counsel for the petitioner in W.P.Nos.12683 & 12685 of 2021 submits that in the present case, the petitioner was issued with a Show Cause Notice, to which, the petitioner has filed reply. He further submits that the petitioner had also filed an appeal which had been rejected for the reason that the appeal was filed beyond the period of limitation under Section 107 of the TNGST Act, 2017.

134. He further submits that the Government has extended the time for filing application for revocation of cancellation of registration under Section 30 of the TNGST Act from time to time.

135. Considering the fact and circumstances of the case, the petitioner had filed a petition on 27.09.2021, which has been, rejected on the ground that no order has been passed in view of the pendency of the present petition, the learned counsel for the petitioner in W.P.Nos.12683 & 12685 of 2021 submits that the Government has also issue a relaxation as per Notification No.34/2021 – Central Board of Indirect Taxes and Customs, dated 29.08.2021.

_____ <https://www.mhc.tn.gov.in/judis> Page No 67 of 129 W.P.Nos.25048 of 2021 and etc. batch

136. The petitioner during the pendency of these Writ Petitions had filed an application in terms of Notification No.34/2021 – Central Board of Indirect Taxes and Customs, dated 29.08.2021. The relevant portion of the said Notification reads as under:-

G.S.R.....(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 3 rd 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 3 rd April, 2020 and No. 14/2021-Central Tax, dated the 1 st May, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub

section (i), vide number G.S.R. 310(E), dated the 1 st 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 (c) 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 _____

<https://www.mhc.tn.gov.in/judis> Page No 68 of 129 W.P.Nos.25048 of 2021 and etc. batch period from the 1 st day of March, 2020 to 31st day of August, 2021, the time limit for making such application shall be extended upto the 30th day of September, 2021.

137. The learned counsel for the petitioner also drawn the attention of this Court to Circular No.158/14/2021 – GST issued by the Department of Revenue, Central Board of Indirect Taxes and Customs, dated 06.09.2021. The operative portion has already been extracted above.

138. Dealing with the situation where an assessee had filed an appeal before the Appellate Commissioner and had suffered an order of the Appellate Commissioner, a request was made in W.P.Nos.20083 & 20086 of 2021, content of which has been extracted above, to direct the respondents to consider and pass appropriate orders in the light of the concession given by Notification No.34/2021, dated 29.08.2021 of Central Board of Indirect Taxes and Customs.

139. Since the petitioner has approached the Authority concerned _____ <https://www.mhc.tn.gov.in/judis> Page No 69 of 129 W.P.Nos.25048 of 2021 and etc. batch before the deadline prescribed as 30.09.2021, these Writ Petitions deserve to be allowed.

140. In W.P.No.14241 of 2020, the petitioner has challenged the impugned order dated 11.11.2019 passed by the respondent for revocation of cancellation of GST Registration in respect to the Show Cause Notice dated 18.10.2019, and also questioning the jurisdiction of the respondent with matters relating to examining petitioner's ITC(Input Tax Credit).

141. Mr.Adithya Reddy, the learned counsel for the petitioner submits that the respondent issued a Show Cause Notice dated 18.10.2019 to the petitioner under Section 29(2) (c) of TNGST Act, i.e. for non-filing of return for a period of six months. The petitioner filed a reply to the Show Cause Notice vide letter dated 30.10.2019. Thereafter, the respondent had passed the impugned order dated 11.11.2019 for cancellation of GST registration.

142. He further submits that aggrieved by the aforesaid order, the _____ <https://www.mhc.tn.gov.in/judis> Page No 70 of 129 W.P.Nos.25048 of 2021 and etc. batch petitioner filed an application for revocation of cancellation of registration on 26.08.2020. Along with the application, the petitioner also filed all the returns for the period in default.

143. It is submitted that the petitioner received a Show cause notice for rejection of the application and the reason for revocation was mentioned as "You are requested to provide the details of interest paid in DR-03 and reversal of ineligible ITC with interest, if any for the period under cancellation. "

144. The learned counsel for the petitioner submits that the respondent has no jurisdiction to examine the eligibility of petitioner's ITC. The respondent proceeded to reject petitioner's application for revocation vide order dated 07/09/2020 on the basis that, petitioner did not respond to the show cause notice.

145. It is further submitted that the respondent has assumed that the petitioner's ITC for the month of March 2019 to September 2019 was barred by time in terms of section 16(4) of the TNGST Act, which is _____ <https://www.mhc.tn.gov.in/judis> Page No 71 of 129 W.P.Nos.25048 of 2021 and etc. batch considered to be illegal; In any event the respondent has no jurisdiction to scrutinize the returns filed by the petitioner and point out any defects.

146. In W.P.No.26026 of 2021, the petitioner has challenged the impugned order dated 22.09.2021 passed by the first respondent for cancellation of GST Registration in respect of Show Cause Notice dated 19.12.2018.

147. Mr.B.Ramesh Kumar, the learned counsel for the petitioner submits that respondent issued a Show Cause Notice dated 19.12.2018 to the petitioner under Section 29(2)(c) of TNGST Act , i.e. for non-filing of return for a period of six months. The Show Cause Notice was sent through online. It is case of the petitioner, that the petitioner was unaware and saw the notice belatedly as the notice was sent through online.

148. It is stated that the second respondent has cancelled the GST Registration vide order dated 07.02.2019 without giving further notice and also without giving an opportunity of being heard. The petitioner filed _____ <https://www.mhc.tn.gov.in/judis> Page No 72 of 129 W.P.Nos.25048 of 2021 and etc. batch an application for revocation of cancellation of registration in terms of the Notification No.34/2021- Central Tax, dated 29.08.2021. The System rejected the application as the application for revocation cannot be filed beyond 579 days from the date of cancellation.

149. He further submits that aggrieved by the order, the petitioner filed an appeal vide Appeal No.409 of 2021. But, the first respondent dismissed the appeal on the ground that there was a delay in filing.

150. I have heard the learned Senior Counsel and respective counsel for the petitioners in the respective Writ Petitions and the learned Special Government Pleader, learned Senior Standing Counsel for the respective respondents.

151. There are broadly four categories of cases. Some of the petitioners have directly challenged the order of cancellation of GST registration passed under Section 29 of the respective GST Acts. All these petitioners had a remedy to file an application under Section 30 of the respective GST Acts for revocation of cancellation of the registration in _____ <https://www.mhc.tn.gov.in/judis> Page No 73 of 129 W.P.Nos.25048 of 2021 and etc. batch time subject to the conditions prescribed therein or to file an appeal before the Appellate Authority under Section 107 of the respective GST Acts.

152. As far as the second category of cases in W.P.No.14241 of 2020 is concerned, the petitioner has exercised the above option by filing application under Section 30 of the respective GST Acts. However, the Original Authority has rejected the same on the ground that the petitioner has not filed any reply to the notice dated 26.08.2020.

153. The third and fourth categories of cases are similar. After the orders of cancellation of GST registration were passed, these petitioners, instead of choosing to file an application under Section 30 of the respective GST Acts for revocation of cancellation of registration in time, filed appeals before the Appellate Commissioner under Section 107 of the respective GST Acts belatedly beyond the period prescribed for condonation of limitation.

154. Some of the appeals filed against the order of cancellation of _____ <https://www.mhc.tn.gov.in/judis> Page No 74 of 129 W.P.Nos.25048 of 2021 and etc. batch GST registration were rejected without numbering, while, some of the appeals were numbered and rejected on the ground that the time prescribed for appeal had expired. Appeals filed by these petitioners were dismissed as these appeals were filed not only beyond the statutory period of limitation prescribed under Section 107 of the respective GST Acts but also beyond the condonable period.

155. 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 that 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.

156. As original or as appellate authority exercising power under the respective enactments, quasi judicial officers were bound by the _____ <https://www.mhc.tn.gov.in/judis> Page No 75 of 129 W.P.Nos.25048 of 2021 and etc. batch 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.

157. Under these circumstances, no fault can be attributed to the impugned orders passed by the Appellate Commissioner inasmuch as they cannot exercise jurisdiction beyond the provisions of the Act and are bound to act in accordance of the provisions of the Act. At the same time, I find there are overwhelming reasons for granting reliefs to these petitioners to restore their registration.

158. Before proceeding to deal further with the issue, it will be useful to refer the legal changes brought to the tax regime with the enactments of respective Goods and Services Tax Act. When GST came into force with effect from 01.07.2017, it was found that there was overlapping of the jurisdiction by the officers functioning under the Central Goods and Services Tax Act, 2017 and respective State/Union Goods and Services Tax Act, 2017. This was reconciled by the Central _____ <https://www.mhc.tn.gov.in/judis> Page No 76 of 129 W.P.Nos.25048 of 2021 and etc. batch Government by issuing Circular No.1/2017, dated 20.09.2017. Relevant portion of Circular No.1/2017, dated 20.09.2017 is reproduced below:-

Based on the decisions taken in the 9th Meeting of the GST Council held on 16 January, 2017 and 21st Meeting of the GST Council held on 9 September, 2017, the following criteria should be followed for the division of taxpayer base between the

Centre and the States to ensure single interface:

i. Of the total number of taxpayers below Rs.

1.5 crore turnover, all administrative control over 90% of the taxpayers shall vest with the State tax administration and 10% with the Central tax administration;

ii. In respect of the total number of taxpayers above Rs. 1.5 crore turnover, all administrative control shall be divided equally in the ratio of 50% each for the Central and the State tax administration; iii. The division of taxpayers in each State shall be done by computer at the State level based on stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed;

2. Further, the broad guidelines for the purposes of computation of "Turnover" as approved by the GST Implementation Committee in its meeting held on 31 August and 1 September 2017 and subsequently by the GST Council in its 21st Meeting held on 9 September 2017 are as follows:

_____ <https://www.mhc.tn.gov.in/judis> Page No 77 of 129 W.P.Nos.25048 of 2021 and etc. batch i. For taxpayers registered only under VAT, the total annual State turnover under VAT (including inter-State sales, exports and exempt goods) shall be taken as the basis for division;

ii. For taxpayers registered under both VAT and Central Excise, the annual State turnover under VAT shall be taken as the basis for division as State-level Central Excise turnover is already included in it; iii. For taxpayers registered only under Central Excise (and not under VAT), the total annual turnover declared in Central Excise returns shall be taken as the basis for division; iv. For taxpayers registered only under Service Tax in a State on a stand-alone basis, the annual turnover of the Services declared in the Service Tax returns shall be taken as the basis for division;

v. For taxpayers registered only under Service Tax having centralized registration, the annual all-India turnover of the Services declared in the Service Tax returns shall be taken as the basis for division.

vi. For taxpayers registered under both VAT and Service Tax, the total non-overlapping turnover (total of VAT and Service Tax, excluding any turnover which is included in both) shall be calculated and used as the basis for division. The Service Tax turnover shall be on the basis of clauses (iv) and (v) as the case may be.

3. The State Level Committees Commercial Taxes of respective comprising Chief Commissioner/Commissioner States and _____ <https://www.mhc.tn.gov.in/judis> Page No 78 of 129 W.P.Nos.25048 of 2021 and etc. batch jurisdictional Central Tax Chief Commissioners/Commissioners are already in place for effective coordination between the Centre and the States. The said Committees may now take necessary steps for division of taxpayers in each

State keeping in view the principles stated above. Supplementary decisions, if any, may be taken by the said Committees to implement the decision of the GST Council, keeping in view the broad principles stated hereinabove.

159. Though the enactment of the respective Goods and Service Tax Act, 2017 was made without a detailed discussion in the respective houses of the Parliaments and the Legislative Assemblies of the State and Union Territories, nevertheless these enactments are comprehensive and detailed with few design faults which have procedural ramification.

160. As per section 39 of the respective GST enactments, every registered person, other than an Input Service Distributor of a non- resident taxable person or a person paying tax under the provisions of Sections 10 or 51 or 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services on both, input tax credit availed, tax payable, tax paid and _____ <https://www.mhc.tn.gov.in/judis> Page No 79 of 129 W.P.Nos.25048 of 2021 and etc. batch such other particulars, in such form and in such manner and in such time, as may be prescribed.

161. As per sub-clause (10) to Section 39 of the respective CGST and TNGST, a registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous period has not been furnished. As per the notes on clauses to the above Section, taxes are to be paid by due date of filing of the return.

162. This clause also provides for the time limit up to which rectification of any omission or incorrect particulars in the returns can be carried out. Failure to file returns for 3 consecutive period results in cancellation of the registration granted under the respective enactments.

163. A comprehensive procedure has been prescribed in Chapter VI of the respective GST enactments in this regard. As per Section 22 of these enactments, every supplier is liable to register in the State or Union Territory, other than special category States, from where any taxable supply of goods or service or both, are made. Section 22 of the Act reads _____ <https://www.mhc.tn.gov.in/judis> Page No 80 of 129 W.P.Nos.25048 of 2021 and etc. batch as under:-

22. (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered

under this Act with effect from the appointed day.

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a _____ <https://www.mhc.tn.gov.in/judis> Page No 81 of 129 W.P.Nos.25048 of 2021 and etc. batch High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Explanation.—For the purposes of this section,—

(i) the expression “aggregate turnover” shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;

(ii) the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;

(iii) the expression “special category States” shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution.

164. As per Section 22(2) of the Central Goods and Services Tax Act, 2017, every person who, on the day immediately preceding the appointed day, was registered or held a license under an existing law, shall be liable to be registered under the Act with effect from the appointed day.

_____ <https://www.mhc.tn.gov.in/judis> Page No 82 of 129 W.P.Nos.25048 of 2021 and etc. batch

165. Section 25 of the respective GST enactment contemplates the procedure for registration. Section 25 of the CGST Act, 2017 reads as under:

25. (1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Explanation.—Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.

(3) A person, though not liable to be registered _____
<https://www.mhc.tn.gov.in/judis> Page No 83 of 129 W.P.Nos.25048 of 2021 and etc. batch under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 in order to be eligible for grant of registration:

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

(8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any _____
<https://www.mhc.tn.gov.in/judis> Page No 84 of 129 W.P.Nos.25048 of 2021 and etc.

batch action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1),--

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner, shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period.

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166. Section 26 also deals with a situation for grant of deemed registration where registration number of unique identity number has been issued or rejected under the State /Union Territory Goods and Service Tax Acts, 2017.

167. As far as cancellation or suspension of registration is concerned, Section 29 of the respective GST enactments deals with the same. Rule 22 respective of the respective GST Rules, 2017 implements the provisions of Section 29 of the GST enactment by prescribing procedure of cancellation. Section 29 of the respective GST enactment and Rule 22 of the respective GST Rules, 2017 are reproduced as under:-

Section 29 of Central Goods and Rule 22 of Central Goods and Services Tax Act 2017 -
Cancellation Services Rules, 2017 -

of Registration Cancellation of registration (1) The proper officer may, either on (1) Where the proper officer has his own motion or on an application filed reasons to believe that the by the registered person or by his legal registration of a person is liable to be heirs, in case of death of such person, cancelled under section 29, he shall

not cancel the registration without giving the person an opportunity of being heard. cancel the registration, in such manner issue a notice to such person in and within such period as may be FORM GST REG-17, requiring him prescribed, having regard to the to show cause, within a period of circumstances where,- seven working days from the date of the service of such notice, as to why the business has been discontinued, his registration shall not be transferred fully for any reason cancelled.

_____ <https://www.mhc.tn.gov.in/judis> Page No 86 of 129 W.P.Nos.25048 of 2021 and etc. batch Section 29 of Central Goods and Rule 22 of Central Goods and Services Tax Act 2017 - Cancellation Services Rules, 2017 -

of Registration Cancellation of registration including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or there is any change in the constitution of the business; or the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.

(2) The proper officer may cancel the (2) The reply to the show cause registration of a person from such date, notice issued under sub-rule (1) including any retrospective date, as he shall be furnished in FORM REG- may deem fit, where,- 18 within the period specified in the said sub-rule.

a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or any person who has taken voluntary registration under sub-

(3) The cancellation of registration under this section shall not affect the (3) Where a person who has liability of the person to pay tax and submitted an application for other dues under this Act or to discharge cancellation of his registration is no any obligation under this Act or the rules longer liable to be registered or his made thereunder for any period prior to registration is liable to be cancelled, the date of cancellation whether or not the proper officer shall issue an such tax and other dues are determined order in FORM GST REG-19, before or after the date of cancellation. within a period of thirty days from the date of application submitted under [sub-rule (1) of] 16 rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section (4) The cancellation of registration under the State Goods and Services Tax (4) Where the reply furnished Act or the Union Territory Goods and under sub-rule (2) is found to be Services Tax Act, as the case may be, satisfactory, the proper officer shall shall be deemed to be a cancellation of drop the proceedings and pass an registration under this Act. order in FORM GST REG –20:

_____ <https://www.mhc.tn.gov.in/judis> Page No 88 of 129
W.P.Nos.25048 of 2021 and etc. batch Section 29 of Central Goods and Rule 22 of
Central Goods and Services Tax Act 2017 - Cancellation Services Rules, 2017 -

of Registration Cancellation of registration [Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20] 17 (5) Every registered person whose registration is cancelled shall pay an (5) The provisions of sub-rule (3) amount, by way of debit in the electronic shall, mutatis mutandis, apply to the credit ledger or electronic cash ledger, legal heirs of a deceased proprietor, equivalent to the credit of input tax in as if the application had been respect of inputs held in stock and inputs submitted by the proprietor himself.

contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher _____
<https://www.mhc.tn.gov.in/judis> Page No 89 of 129 W.P.Nos.25048 of 2021 and etc.
batch Section 29 of Central Goods and Rule 22 of Central Goods and Services Tax Act 2017 - Cancellation Services Rules, 2017 -

of Registration Cancellation of registration (6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

168 . Sub Section (2) to Section 29 deals with a situation where, a proper officer may cancel the registration of a person from such date, including a retrospective date, as he may deem such.

169. All the cases under consideration fall under situation under Sub Clause (2)(c) i.e “where a registered person other than the person specified in Clause (b) has failed to furnish returns for a continuous period of 6 months”.

170. All these petitioners were issued with a proper notice as is contemplated under the aforesaid provision. The orders were also passed after giving petitioners sufficient opportunity of being heard. Majority of the petitioners failed to respond notices issued by the respondent State Tax Officer proposing the cancellation of the registration of the respective _____
<https://www.mhc.tn.gov.in/judis> Page No 90 of 129 W.P.Nos.25048 of 2021 and etc. batch petitioners.

171. One of the options available noticee whose registration is cancelled, is to approach the same authority for revocation of cancellation of the registration in the manner prescribed within 30 days from the date of service of cancellation of registration.

172. When Section 30 was incorporated in the respective GST enactments with effect from 1st July, 2017, there was no proviso to Section 30(1) of the Act. Section 30 of the respective GST enactments read as under:-

Section 30 of - 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.

(2) The proper officer may, in such manner and within such period as may be prescribed, by _____ <https://www.mhc.tn.gov.in/judis> Page No 91 of 129 W.P.Nos.25048 of 2021 and etc. batch 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.

173. Only, a single window of opportunity was given to file application within thirty (30) days for revocation of cancellation order under Section 30(1). However, right from the beginning, GST Council recognised that the GST law was new and assessee encountered the difficulties in switching to procedural compliance electronically through Internet on the GST Web-Portal.

174. Considering the hardship faced by the assessee, the GST Council in its 33rd Meeting held on 24.02.2019 took a decision. Pursuant to aforesaid decision, the Central Government, on recommendations of the _____ <https://www.mhc.tn.gov.in/judis> Page No 92 of 129 W.P.Nos.25048 of 2021 and etc. batch GST Council, in exercise of power conferred under Section 172 of the Central Goods and Services Tax Act, 2017, inserted a proviso to Section 30(1) of the respective GST enactments vide Order No.5/2019-GST, Central Board of Indirect Taxes and Customs, dated 23.04.2019. Thus, Proviso to Section 30(1) of the Act read as under:-

“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.”

175. This was a novel and an unconventional method adopted to amend the Act. It was contrary to the well established procedure under the Constitution and Law for amending a statute. The above amendment was a stop gap arrangement. As per the aforesaid proviso which was inserted to Section 30(1) of the Act, wherever cancellation orders had been passed upto 31.03.2019 and application for revocation was not filed _____ <https://www.mhc.tn.gov.in/judis> Page No 93 of 129 W.P.Nos.25048 of 2021 and etc. batch within thirty (30) days under Sub-Section 1 to Section 30, an option was given to file an application for revocation of cancellation of the registration not later than 22.07.2019.

176. Implementing requirement of section 30 of the GST enactments, Rule 23 of the GST Rules, 2017 has been prescribed. Section 30 of the GST enactments and Rule 22 of the GST Rules 2017 are reproduced below:-

Section 30 of the GST Act Rule 22 of the GST Rules, 2017 (1) Subject to such conditions as (1) Where the proper officer has may be prescribed, any registered person has reasons to believe that the registration person, whose registration is cancelled of a person is liable to be cancelled by the proper officer on his own under section 29, he shall issue a motion, may apply to such officer for notice to such person in FORM GST revocation of cancellation of the REG-17, requiring him to show cause, registration in the prescribed manner within a period of seven working days within thirty days from the date of from the date of the service of such service of the cancellation order. notice, as to why his registration shall not be cancelled.

(2) The proper officer may, in the (2) The reply to the show cause manner and within such period as may notice issued under sub-rule (1) shall be prescribed, by order, either revoke be furnished in FORM REG-18 cancellation of the registration or reject within the period specified in the said the application: sub-rule.

Provided that the application for revocation of cancellation of registration shall not be rejected unless _____ <https://www.mhc.tn.gov.in/judis> Page No 94 of 129 W.P.Nos.25048 of 2021 and etc. batch Section 30 of the GST Act Rule 22 of the GST Rules, 2017 the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of (3) Where a person who has submitted registration under the State Goods and an application for cancellation of his Services Tax Act or the Union registration is no longer liable to be Territory Goods and Services Tax Act, registered or his registration is liable to as the case may be, shall be deemed to be cancelled, the proper officer shall be a revocation of cancellation of issue an order in FORM GST REG- registration under this Act. 19, within a period of thirty days from the date of application submitted under [sub-rule (1) of] 16 rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.

(4) Where the reply furnished under sub-rule (2) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG –20: [Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20] 17 _____ <https://www.mhc.tn.gov.in/judis> Page No 95 of 129 W.P.Nos.25048 of 2021 and etc. batch Section 30 of the GST Act Rule 22 of the GST Rules, 2017 (5) The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

177. An alternate remedy is also available in the order of cancellation by way of appeal under Section 107 of the respective GST enactments which option has been exercised by some of the writ petitioners but beyond the period of limitation.

178. A reading of Section 29 of the Act respective GST enactments also makes it clear that cancellation of registration under the aforesaid section does not affect the liability of a person to pay tax and other dues under the Act or discharge any obligation under the said Act and the rules made under for any period prior to the date of cancellation, whether or not such tax and other dues are determined before or after the date of cancellation. They also make it clear that cancellation of registration under anyone of the other GST enactments shall be deemed to be _____ <https://www.mhc.tn.gov.in/judis> Page No 96 of 129 W.P.Nos.25048 of 2021 and etc. batch cancellation of registration under the other GST enactments.

179. None of the petitioners are coming within the limitation prescribed under Section 30 of the respective GST enactments except the petitioner in W.P.No.14241 of 2020 whose registration was cancelled vide order dated 13.11.2019. The said petitioner alone filed an application on 26.08.2020 before the Assistant Commissioner, the respondent in the said writ petitioner.

180. However, the respondent rejected the said application simply stating that the petitioner had not filed any reply to the Show Cause Notice dated 26.08.2020. A reading of the said Show Cause Notice dated 26.08.2020 merely states that the petitioner was requested to provide the details of interest paid in DRC-03 and reversal of ineligible ITC with interest, if any for the period under cancellation.

181. Appeals of the petitioners in W.P.Nos.23374, 20945, 20722, 25146, 25147, 25156, 21237, 26190, 26187 & 14508 of 2021 who opted to file appeals, were beyond the period for condoning the limitation under _____ <https://www.mhc.tn.gov.in/judis> Page No 97 of 129 W.P.Nos.25048 of 2021 and etc. batch Section 107 of the Act. They were rightly rejected at the preliminary stage for appeals filed beyond the period of limitation cannot be entertained in view of 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

182. Similarly, the appeals of the petitioners in W.P.Nos.25048, 17237, 25877, 25118, 24967, 12683, 12685 & 26026 of 2021 and in W.P.Nos.507, 126 & 128 of 2022 were also rightly rejected after they were numbered. Their appeals were also rightly rejected correctly as such appeals were filed beyond the period for condonation of the delay as per the above decision.

183. The petitioners in W.P.Nos.25678, 21315, 23374, 20945, 20722, 24967, 21237 & 26026 of 2021 and W.P.No.507 of 2022 whose registration had already been cancelled and who had an opportunity to file an application under the above proviso also failed to avail the above opportunity.

_____ <https://www.mhc.tn.gov.in/judis> Page No 98 of 129 W.P.Nos.25048 of 2021 and etc. batch

184. Nationwide, lockdown was imposed on 24.08.2020 due to the outbreak of SARS Covid-19 Pandemic. Under these circumstances, Government, rose to the occasion based on the recommendation of the GST Council and gave a fresh opportunity to those persons whose right to file an application under Section 30(1) of the Act and the remedy under proviso to the Section 30(1) of the Act had expired between 20.03.2020 to 29.06.2020 by extending the period upto 30.06.2020 vide Notification No.35/2020 – Central Tax, Central Board of Indirect Taxes and Customs, dated 03.04.2020.

185. This Notification was issued in the exercise of power conferred under Section 168A of the Central Goods and Services Tax Act, 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017 and Section 21 of the Union Territory Goods and Services Tax Act, 2017. This did not address the case of the above petitioners.

186. However, on 25.06.2020, the Central Government on the recommendations of the Council, in the exercise of power conferred under Section 172 of the Central Goods and Services Tax Act, 2017, issued the _____ <https://www.mhc.tn.gov.in/judis> Page No 99 of 129 W.P.Nos.25048 of 2021 and etc. batch Central Goods and Services Tax (Removal of Difficulties) Order, 2020 vide Order No.01/2020-Central Tax, Central Board of Indirect Taxes and Customs, dated 25.06.2020. Relevant portion of the said Notification reads as under:-

1. Short title.- This Order may be called the Central Goods and Services Tax (Removal of Difficulties) Order, 2020.-

2. For the removal of difficulties, it is hereby 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 for those registered persons who were served notice under clause (b) or clause (c) of 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 where cancellation order was passed up to 12th June, 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.

187. The amnesty in the above Government Order pertains to cases where orders were passed upto 12.06.2020. This was the first opportunity given to /the petitioners in W.P.Nos.25048, 12738, 17237, 25877, 25026, 25146, 25147, 25156, 12683, 12685, 25705, 26190, 26187, 14241 & _____ <https://www.mhc.tn.gov.in/judis> Page No 100 of 129 W.P.Nos.25048 of 2021 and etc. batch 14508 of 2021 and in W.P.Nos.126 & 128 of 2022 and the second chance for others to revive their registration.

188. The time for filing appropriate application for revoking the cancellation of registration was extended either from date of service of the said cancellation order or 31.08.2020 which was later.

189. Thus, all these petitioners whose registration had been cancelled prior to 12.06.2020 were given a fresh opportunity to file an application for revocation of cancellation of registration in terms of the Central Goods and Services Tax (Removal of Difficulties) Order, 2020 vide Order No.01/2020-Central Tax, Central Board of Indirect Taxes and Customs, dated 25.06.2020. However, none of the petitioners opted to exercise the privilege.

190. Mirroring the above Notification, G.O. (Ms). No.102, Commercial Taxes and Registration (B1) Department, dated 26.06.2020 was issued by the Government of Tamil Nadu. However, none of the petitioners opted perhaps on account of the fact that the whole world was _____ <https://www.mhc.tn.gov.in/judis> Page No 101 of 129 W.P.Nos.25048 of 2021 and etc. batch reeling under the grip of the 2nd wave of Covid.

191. Later, proviso was substituted by Section 122 of the Finance Act, 2020 which came into force from 01.01.2021 which reads as under:-

“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).”.

192. By Notification No.92/2020-Central Tax, dated 22.12.2020, the Central Government appointed the 1st day of January, 2021 as the date on which the provisions of Section 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the Act shall come into force. Thus, Section 30 of the GST Acts, came into force with effect from 1st day of January, 2021. The said Notification reads as under:-

Government of India Ministry of Finance _____

<https://www.mhc.tn.gov.in/judis> Page No 102 of 129 W.P.Nos.25048 of 2021 and etc. batch (Department of Revenue) Central Board of Indirect Taxes and Customs

Notification No 92/2020-Central Tax New Delhi, the 22nd December, 2020 S.O.

(E).— In exercise of the powers conferred by sub-section (2) of section 1 of the Finance Act, 2020 (12 of 2020) (hereinafter referred to as the said Act), the Central Government hereby appoints the 1st day of January, 2021, as the date on which the provisions of sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the said Act shall come into force.

[F.No. CBEC-20/06/04/2020-GST]

193. Parallel amendments were made to Rule 23 of the respective GST Rules and FORM GST REG-21 was amended vide Notification No.15/2021-Central Tax, Central Board of Indirect Taxes and Customs, dated 18.05.2021. Rule 23 (Revocation of Cancellation of Registration) of the respective GST Rules reads as under:-

Rule 23 - Revocation of Cancellation
Registration

1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of _____ <https://www.mhc.tn.gov.in/judis> Page No 103 of 129 W.P.Nos.25048 of 2021 and etc. batch cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration [or within such time period as extended by the Additional Commissioner or the Joint Commissioner or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to sub- section (1) of section 30,] at the common portal,

either directly or through a Facilitation Centre notified by the Commissioner:

Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns. [Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration.

Provided also that where the registration has been cancelled with retrospective effect the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.]

2) (a) Where the proper officer is satisfied, for _____ <https://www.mhc.tn.gov.in/judis> Page No 104 of 129 W.P.Nos.25048 of 2021 and etc. batch reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant.

(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in FORM GST REG-05, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in FORM GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in FORM GST REG-

Upon receipt of the information or clarification in FORM GST REG-24, the proper officer shall proceed to dispose of the application in the manner specified in sub-rule (2) within a period of thirty days from the date of the receipt of such information or clarification from the applicant.

194. The above amendment however did not address the case of the petitioners whose registrations were cancelled after 31.03.2019 and before the above amendment to the Act as Rules with effect from _____ <https://www.mhc.tn.gov.in/judis> Page No 105 of 129 W.P.Nos.25048 of 2021 and etc. batch 01.01.2021.

195. Thus, rest of the petitioners in W.P.Nos.25048, 12738, 17237, 25877, 25026, 25146, 25147, 25156, 12683, 12685, 25705, 26190, 26187, 14241 & 14508 of 2021 and in W.P.Nos.126 & 128 of 2022 also had no opportunity to file an application under the proviso to Section 30(1) of the Act.

196. These petitioners had only one option to file an application within a period of 30 days from the date of service of the order of cancellation of registration under Section 30(1) of the Act which had expired long back.

197. Still later, in view of the prevailing situation, Notification No.34/2021 – Central Tax, Central Board of Indirect Taxes and Customs, dated 29.08.2021 was issued by the Central Government once again on the recommendation of the GST Council. Notification No.34/2021 – Central Tax, Central Board of Indirect Taxes and Customs, dated 29.08.2021 which reads as under:-

_____ <https://www.mhc.tn.gov.in/judis> Page No 106 of 129
W.P.Nos.25048 of 2021 and etc. batch Government of India Ministry of Finance
(Department of Revenue) Central Board of Indirect Taxes and Customs Notification
No. 34/2021 – Central Tax New Delhi, the 29th August, 2021 G.S.R(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 3 rd 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 3 rd 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), vide number G.S.R. 310(E), dated the 1 st 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 (c) 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 1 st day of March, 2020 to 31st day of August, _____

<https://www.mhc.tn.gov.in/judis> Page No 107 of 129 W.P.Nos.25048 of 2021 and etc. batch 2021,
the time limit for making such application shall be extended upto the 30th day of September, 2021.

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

198. The Central Government in the above Notification took a decision to extend the time limit upto
30.09.2021 for the persons like petitioners. However, this was applicable to those registration which
had been cancelled and time limit for filing application for revocation of cancellation of registration
had expired during the period commencing from the 1st day of March, 2020 to 31st day of August,
2021. Thus, the time limit for making such application stood extended upto the 30th day of September,
2021.

199. In the light of the above Notification, the Principal Commissioner has also issued clarification vide Circular No.158/14/2021-GST, Central Board of Indirect Taxes and Customs, dated 06.09.2021, while, tracing out the history, in paragraph Nos.3 and 4, it has been clarified as follows:-

_____ <https://www.mhc.tn.gov.in/judis> Page No 108 of 129
W.P.Nos.25048 of 2021 and etc. batch Paragraph No.3 Paragraph No.4 3.1. The said notification specifies that 4. It may be recalled that, with effect where the due date of filing of from 01.01.2021, proviso to Sub-

application for revocation of section (1) of 30 of the CGST Act has cancellation of registration falls been inserted which provides for between 1st March, 2020 to 31 st extension of time for filing application August, 2021, the time limit for filing for revocation of cancellation of of application for revocation of registration by 30 days by cancellation of registration is extended Additional/Joint Commissioner and by to 30 th September 2021. Accordingly, another 30 days by the Commissioner. it is clarified that the benefit of said Doubts have been raised whether the notification is extended to all the cases said notification has extended the due where cancellation of registration has date in respect of initial period of 30 been done under clause (b) or clause days for filing the application (in cases

(c) of Sub-section (2) of Section 29 of where registration has been cancelled the CGST Act, 2017 and where the under clause (b) or clause (c) of sub- due date of filing of application for section (2) of section 29+ of CGST revocation of cancellation of Act, 2017) under sub-section (1) of section 30 of the CGST Act or whether registration falls between 1 st March, the due date of filing applications for 2020 to 31 st August, 2021. It is further revocation of registration can be clarified that the benefit of notification extended further for the period of 60 would be applicable in those cases also days (30+30) by the Joint where the application for revocation of Commissioner/Additional cancellation of registration is either Commissioner/Commissioner, as the pending with the proper officer or has case may be, beyond the extended date already been rejected by the proper of 30.09.2021. It is clarified that:

officer. It is further clarified that the benefit of notification would also be available in those cases which are i. where the thirty days' time limit pending with the appellate authority or falls between 1st March, 2020 which have been rejected by the to 31st December, 2020, there appellate authority. In other words, the is no provision available to date for filing application for extend the said time period of revocation of cancellation of 30 days under section 30 of the registration in all cases, where CGST Act. For such cases, registration has been cancelled under pursuant to the said notification, clause (b) or clause (c) of Sub-section the time limit to apply for (2) of Section 29 of CGST Act, 2017 revocation of cancellation of and where the due date of filing of registration stands extended up _____
<https://www.mhc.tn.gov.in/judis> Page No 109 of 129 W.P.Nos.25048 of 2021 and etc. batch Paragraph No.3 Paragraph No.4 application for revocation of to 30th September, 2021 only;

cancellation of registration falls and between 1st March, 2020 to 31 st ii. where the time period of thirty August, 2021, is extended to 30 th days since cancellation of September, 2021, irrespective of the registration has not lapsed as on status of such applications. As 1st January, 2021 or where the explained in this para, the said registration has been cancelled notification would be applicable in the on or after 1st January, 2021, following manner: the time limit for applying for revocation of cancellation of registration shall stand extended i. application for revocation of as follows:

cancellation of registration has not been filed by the taxpayer- (a) Where the time period of 90 days (initial 30 days and extension of 30 + 30 days) In such cases, the applications since cancellation of for revocation can be filed upto registration has elapsed by the extended timelines as 31.08.2021, the time limit to provided vide the said apply for revocation of notification. Such cases also cancellation of registration cover those instances where an stands extended upto 30th appeal was filed against order September 2021, without any of cancellation of registration further extension of time by and the appeal had been Joint Commissioner/ Additional rejected. Commissioner/ Commissioner. ii. application for revocation of (b) Where the time period of 60 cancellation of registration days (and not 90 days) since has already been filed and cancellation of registration has which are pending with the elapsed by 31.08.2021, the time proper officer- limit to apply for revocation of cancellation of registration stands extended upto 30th In such cases, the officer shall September 2021, with the process the application for extension of timelines by revocation considering the another 30 days beyond extended timelines as provided 30.09.2021 by the vide the said notification.

_____ <https://www.mhc.tn.gov.in/judis> Page No 110 of 129 W.P.Nos.25048 of 2021 and etc. batch Paragraph No.3 Paragraph No.4 Commissioner, on being iii. application for revocation of satisfied, as per proviso to sub-

(1) of section 30 of the	cancellation of registration	section
30	was filed, but was rejected by the proper officer and	CGST Act
90	taxpayer has not filed any	(c) Where the time period of
of	appeal against the rejection –	days (and not 60 days or
by		days) since cancellation
limit to		registration has elapsed
revocation of	In such cases, taxpayer may file	31.08.2021, the time
registration	a fresh application for	apply for
30th	revocation and the officer shall	cancellation of
by	process the application for	stands extended upto
and	revocation considering the	September 2021, with the
	extended timelines as provided	extension of timelines
	vide the said notification.	another 30 days beyond
		30.09.2021 by the Joint/
		Additional Commissioner
		another 30 days by the
Commissioner, on being		iv. application for revocation of
satisfied, as per proviso to sub-		cancellation of registration
		was filed. the proper officer

200. None of the petitioners took advantage of the extension of time granted in the above Notification for revocation of cancellation of registration. Instead, some of them have filed appeals before the Appellate authority.

201. By Circular No.157/13/2021-GST, the Central Board of Indirect Taxes and Customs, GST Policy Wing, dated 20.07.2021, it was classified as follows:-

4. On the basis of the legal opinion, it is hereby clarified that various actions/compliances under GST can be broadly categorised as follows:-

a) Proceedings that need to be initiated or _____
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batch compliances that need to be done by the taxpayers:-

These actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself. Various orders of the Hon'ble Supreme Court would not apply to the said proceedings/ compliances on part of the tax payers.

b) Quasi-Judicial proceedings by tax authorities:-

The tax authorities can continue to hear and dispose off proceedings where they are performing the functions as quasi-judicial authority. This may inter-alia include disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc. Similarly, appeals which are filed and are pending, can continue to be heard and disposed off and the same will be governed by those extensions of time granted by the statutes or notifications, if any.

c) Appeals by taxpayers/ tax authorities against any quasi-judicial order:-

Wherever any appeal is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time line for the same would stand extended as per the Hon'ble Supreme Court's order.

_____ <https://www.mhc.tn.gov.in/judis> Page No 113 of 129
W.P.Nos.25048 of 2021 and etc. batch

202. Meanwhile, the Hon'ble Supreme Court taking note of the hardship faced by the litigants had also extended the limitation by its orders dated 23.03.2020, 08.04.2021, 27.04.2021 & 23.09.2021 in Recognizance of Extension of Limitation Vs. xxxx, in Miscellaneous Application No.665/2021 in SMW(C) No.3/2020.

203. In its order dated 23.09.2021 in the above case, 2021 SCC OnLine SC 947, the Hon'ble Supreme Court held as under:-

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 _____
<https://www.mhc.tn.gov.in/judis> Page No 114 of 129 W.P.Nos.25048 of 2021 and etc. batch 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 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.”

204. This Court, by its order dated 22.09.2021 in Tvl.Sunpenta Mining Service Private Limited Vs. The Assistant Commissioner (ST), Salem, in W.P.Nos.20083 and 20086 of 2021, and order dated 01.10.2021, in Suresh Trading Corporation Vs. The Asst. Commissioner (Circle) of SGST, Coimbatore II, in W.P.No.21109 of 2021, granted time for filing fresh application for revocation of the cancellation of registration.

_____ <https://www.mhc.tn.gov.in/judis> Page No 115 of 129 W.P.Nos.25048 of 2021 and etc. batch

205. Though the Clarifications and Notifications have been issued in a staggered manner by rising to the occasions to facilitate the industries to come back to the GST fold, gap however still continued to haunt these petitioners under the statute. The cases of the petitioners are now beyond the clarifications and relaxation referred to supra.

206. It should be however remembered that 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.

207. A reading of Notification No.52/2020 – Central Tax, Central Board of Indirect Taxes and Customs, dated 24.06.2020, further indicates that returns could be filed belatedly on payment of late fee and waivers were also granted. Relevant portion of the said Notification reads as under:-

(ii) after the third proviso, the following provisos shall be inserted, namely: –
“Provided also that the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived which is in excess of an amount of two hundred and fifty rupees for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01st day of July, 2020 to 30th day of September, 2020:

Provided also that where the total amount of central tax payable in the said return is nil, the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 01st day of July, 2020 to 30th day of September, 2020.”.

208. The provisions of the GST Enactments and the Rules made there under read with various clarifications issued by the Central Government pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear, intention is to only facilitate and not to debar and de-recognised assesses from coming back into the GST fold.
_____ <https://www.mhc.tn.gov.in/judis> Page No 117 of 129 W.P.Nos.25048 of 2021 and etc. batch

209. Thus, the intention of the Government has been to allow the persons like the petitioners to file a fresh application and to process the application for revocation of the cancellation of registration by the officers.

210. 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.

211. 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.

212. May be, organised companies who comply with the _____
<https://www.mhc.tn.gov.in/judis> Page No 118 of 129 W.P.Nos.25048 of 2021 and etc. batch requirement of GST enactments may not give business with these petitioners. However, by keeping the petitioners out of the bounds of GST law, purpose of the Act will not be achieved. It will also not mean that the petitioners will not do business ie., of either supplying goods or service in the unorganised sector. They will still do their business, may be surreptitiously and clandestinely.

213. They may perhaps not get opportunity to supply goods or services to established players. They may still supply to smaller players who may not be keen on GST compliance by the petitioners.

214. By not allowing the petitioners to revive their registration is to de-recognise a whole lot of entrepreneurs and to not to collect GST at all from them.

215. It will only strain the system, as these petitioners will continue to carry on their business and supply goods and service and/or end up not paying the GST under the respective GST enactments. It will _____ <https://www.mhc.tn.gov.in/judis> Page No 119 of 129 W.P.Nos.25048 of 2021 and etc. batch lead to loss of revenue to the Government which is not intended when these enactments were enacted.

216. Since, no useful will be served by not allowing persons like the petitioners to revive their registration and integrate them back into the main stream, I am of the view that the impugned orders are liable to be quashed and with few safeguards.

217. There are adequate safeguards under the GST enactments which can also be pressed against these petitioners even if their registration are revived so that, there is no abuse by these petitioners and there is enough deterrence against default in either paying tax or in complying with the procedures of filing returns.

218. Further, the Government requires tax to meet its expenditure. By not bringing these petitioners within the GST fold, unintended privilege may be conferred on these petitioners unfairly to not to pay GST should they end supplying goods and/or services without registration. For example, a person renting out an immovable property will continue to _____ <https://www.mhc.tn.gov.in/judis> Page No 120 of 129 W.P.Nos.25048 of 2021 and etc. batch supply such service irrespective of registration or not.

219. Therefore, if such a person is not allowed to revive the registration, the GST will not be paid, unless of course, the recipient is liable to pay tax on reverse charge basis. Otherwise, also there will be no payment of value added tax. The ultimate goal under the GST regime will stand defeated. Therefore, these petitioners deserve a right to come back into the GST fold and carry on their trade and business in a legitimate manner.

220. The provisions of the GST Enactments and the Rules made there under read with various clarifications issued by the Central Government pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear, intention is to only facilitate and not to debar and de-recognised assesses from coming back into the GST fold.

221. While exercising jurisdiction, under Article 226 of the _____ <https://www.mhc.tn.gov.in/judis> Page No 121 of 129 W.P.Nos.25048 of 2021 and etc. batch Constitution, the powers of the Court to do justice i.e., what is good for the society, can neither be restricted nor curtailed. This power under Article 226 can be exercised to effectuate the rule of law.

222. Therefore, power of this Court under Article 226 of the Constitution of India is being exercised cautiously in favour of the petitioners as this power is conceived to serve the ends of law and not to transgress them.

223. In *Mafatlal Industries Ltd. Vs. Union of India*, (1997) 5 SCC 536, in Paragraph No.77, the Hon'ble Supreme Court observed that "So far as the jurisdiction of the High Court under Article 226 — or for that matter, the jurisdiction of this Court under Article 32 — is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment. Even while acting in exercise of the said _____ <https://www.mhc.tn.gov.in/judis> Page No 122 of 129 W.P.Nos.25048 of 2021 and etc. batch constitutional power, the High Court cannot ignore the law nor can it override it.

224. Notwithstanding the fact that the petitioners have shown utter disregard to the provisions of the Acts and have failed to take advantage of the amnesty scheme given to revive their registration, this Court is inclined to quash the impugned orders with grant consequential reliefs subject to terms.

225. 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.

226. As original or as appellate authority exercising power under _____ <https://www.mhc.tn.gov.in/judis> Page No 123 of 129 W.P.Nos.25048 of 2021 and etc. batch 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.

227. 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. Therefore, the impugned orders deserve to be quashed.

228. These petitioners deserve a chance and therefore should be allowed to revive their registration so that they can proceed to regularize the defaults. The authorities acting under the Act may impose penalty with the gravity of lapses committed by these petitioners by issuing _____ <https://www.mhc.tn.gov.in/judis> Page No 124 of 129 W.P.Nos.25048 of 2021 and etc. batch notice.

If required, the Central Government and the State Government may also suitably amend the Rules to levy penalty so that it acts as a deterrent on others from adopting casual approach.

229. In the light of the above discussion, these Writ Petitions are allowed subject to the following conditions:-

- i. The petitioners are directed to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of forty five (45) days from the date of receipt of a copy of this order, if it has not been already paid.
- ii. It is made clear that such payment of Tax, Interest, fine / fee and etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.
- iii. If any Input Tax Credit has remained utilized, it _____
<https://www.mhc.tn.gov.in/judis> Page No 125 of 129 W.P.Nos.25048 of 2021 and etc. batch shall not be utilised until it is scrutinized and approved by an appropriate or a competent officer of the Department.
- iv. Only such approved Input Tax Credit shall be allowed for being utilized thereafter for discharging future tax liability under the Act and Rule. v. The petitioners shall also pay GST and file the returns for the period subsequent to the cancellation of the registration by declaring the correct value of supplies and payment of GST shall also be in cash. vi. If any Input Tax Credit was earned, it shall be allowed to be utilised only after scrutinising and approving by the respondents or any other competent authority.
- vii. The respondents may also impose such restrictions / limitation on petitioners as may be warranted to ensure that there is no undue passing of Input Tax Credit pending such exercise and to ensure that there is no violation or an attempt to do bill trading by taking advantage of this order.
- viii. On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.
- ix. The respondents shall take suitable steps by instructing GST Network, New Delhi to make _____
<https://www.mhc.tn.gov.in/judis> Page No 126 of 129 W.P.Nos.25048 of 2021 and etc. batch suitable changes in the architecture of the GST Web portal to allow these petitioners to file their returns and to pay the tax/penalty/fine.
- x. The above exercise shall be carried out by the respondents within a period of thirty (30) days from the date of receipt of a copy of this order.

xi. No cost.

xii. Consequently, connected Miscellaneous Petitions are closed.

31.01.2022 Internet : Yes/No Index : Yes / No jen To

1. The Appellate Deputy Commissioner (ST) (GST), Salem and Erode, Commercial Taxes Building, Pitchards Road, Salem – 7.

2. The Assistant Commissioner (Circle), Salem Bazaar.

_____ <https://www.mhc.tn.gov.in/judis> Page No 127 of 129 W.P.Nos.25048 of 2021 and etc. batch C.SARAVANAN, J.

jen Pre-Delivery Common Order in _____ <https://www.mhc.tn.gov.in/judis> Page No 128 of 129 W.P.Nos.25048 of 2021 and etc. batch W.P.No.25048 of 2021 and etc. batch 31.01.2022 _____ <https://www.mhc.tn.gov.in/judis> Page No 129 of 129