HIGH COURT OF ORISSA : CUTTACK.

W.P.(C) No. 7728 of 2022

(In the matter of an application under
Articles 226 and 227 of the Constitution of India, 1950)

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M/S. DURGA RAMAN PATNAIK
2ND LANE
RAMAKRUSHNA NAGAR
BERHAMPUR
ODISHA – 760 001
REPRESENTED BY ITS
CS PRANAB KUMAR MISHRA ...

Petitioner
Mr. Ramesh Chandra Jena,
Advocate for
the petitioner,
Mr. Rudra Prasad Kar,
Advocate,
Amicus Curiae
assisted by
Mr. Mark Wright,
Advocate

VERSUS

ADDITIONAL COMMISSIONER OF GST (APPEALS) (FIRST APPELLATE AUTHORITY)
HAVING HIS OFFICE AT GST BHAWAN
C.R. BUILDING
RAJASWA VIHAR
BHUBANESWAR
ODISHA – 751 007
& OTHERS

...

Opposite parties
Mr. Subash Chandra Mohanty,
Senior Standing Counsel
(Central Goods and
Services Tax, Central
Excise & Customs)

This matter is taken up by virtual/physical mode.

Date of Hearing : 27.09.2022 :: Date of Judgment : 13.10.2022

P.T.O.

CORAM:

MR. JUSTICE JASWANT SINGH

AND

MR. JUSTICE MURAHARI SRI RAMAN

JUDGMENT

Murahari Sri Raman, J.—

1. The petitioner, proprietorship concern of Sri Durga Raman Patnaik with legal name and trade name "DURGA RAMAN PATNAIK" registered under the provisions of the Central Goods and Services Tax Act, 2017 (referred to as "CGST Act"), while assailing the Order dated 07.10.2021 passed in Appeal bearing No.228/BBSR-GST/APPEAL/2021 by the Additional Commissioner, GST (Appeals) (for brevity referred to as "Appellate Authority") *vide* Annexure-1, questioned the propriety of Order dated 21.08.2019 of Superintendent, Berhampur-I Range, Berhampur Division (for short, "Registering Authority"), who, in exercise of power under Section 29(2)(c) of the said Act, has cancelled the registration (Annexure-4).

2. Fact leading the petitioner to approach this Court to beseech invocation of extraordinary jurisdiction under the provisions of Article 226/227 of the Constitution of India, 1950, is that by referring to reply dated 31.08.2019 submitted by the petitioner in pursuance of terms of Show Cause Notice dated 21.08.2019, the Superintendent of Ganjam-I Circle in Berhampur-I Range without assigning any reason proceeded to cancel the registration, GSTIN:

21ALPPP8146E2ZY on 15.10.2019 invoking provisions of Section 29(2)(c) of the CGST Act with effect from 15.10.2019 inasmuch as there was non-filing of returns for consecutive period of six months.

2.1. Instead of seeking revocation of cancellation of registration under Section 30 of the CGST Act before the proper officer, assailing aforementioned order dated 15.10.2019, the petitioner preferred appeal under Section 107 of the CGST Act on 05.08.2021 with a delay of around 660 days which came to be rejected on 07.10.2021.

2.2. It is submitted by the counsel for the petitioner that while the Appellate Authority made an observation in his Appellate Order that application for revocation of cancellation of registration as envisaged in Section 30 of the CGST Act read with Rule 23 of the Central Goods and Services Tax Rules, 2017 (abbreviated as, "CGST Rules") being not filed within prescribed period, instead of rejecting the appeal on the ground of limitation by taking pedantic view, should have appreciated genuine difficulty faced by not only the petitioner but also other similarly placed suppliers and recipients and relegated him for availing the benefit of said remedial recourse of revocation of order of cancellation of registration under said provision as there is no outer limit provided under afore-mentioned provisions and the delay for sufficient reason being shown can be condoned.

2.3. Urging that the Appellate Authority ought to have shown pragmatic approach by taking a lenient view, referring to Notification No.19/2021— Central Tax, dated 01.06.2021, issued

by Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs, it has been submitted that it has provided relief to the taxpayers by reducing/waiving late fee for non-furnishing Form GSTR-3B for the tax periods from July, 2017 to April, 2021, if the returns for these tax periods are furnished between 01.06.2021 to 31.08.2021. However, by virtue of Notification No. 33/2021— Central Tax, dated 29.08.2021, the last date to avail benefit of the amnesty scheme was extended from 31.08.2021 to 30.11.2021.

2.4. Based on the multiple representations received, Government by issue of Notification No. 34/2021— Central Tax [GSR No.600(E)], dated 29.08.2021 have also extended the timelines for filing of application for revocation of cancellation of registration to 30.09.2021, where the due date of filing of application for revocation of cancellation of registration falls between 01.03.2020 to 31.08.2021. The extension was made applicable only in those cases where registrations were cancelled under clause (b) or clause (c) of sub-section (2) of Section 29 of the CGST Act.

2.5. Such an extension by way of amnesty scheme and extension of time limit for filing of application for revocation of cancellation of registration was promulgated as a benevolent gesture of the Government keeping in mind on the advent of GST regime with effect from 01.07.2017 adverse situations were faced by suppliers/recipients/taxpayers especially small taxpayers. Due to lack of awareness regarding nuances of "strict compliance" of new taxation policy, they could not file their returns in time. Such difficulties were multiplied by outbreak of Severe Acute

Respiratory Syndrome-associated corona virus (SARS-CoV) leading to COVID-19 pandemic. Consequently, such situation was declared *force majeure* which led to promulgation of Section 168A by way of the CGST (Amendment) Act, 2020 granting power to the Government to extend time limit in special circumstances.

2.6. It is, therefore, argued by the counsel for the petitioner that the Appellate Authority was not powerless to grant opportunity to the petitioner to deposit tax, interest coupled with penalty and late fee and relegate him to approach the Registering Authority under Section 30 of the CGST Act by condoning the delay as has been done by this Court in very many cases, namely in the case of *Nirmani Engineers and Constructions Pvt. Ltd. Vrs. The Commissioner of CT&GST, Odisha and Others, W.P.(C) No.15934 of 2021,* wherein *vide* Order dated 05.05.2021, this Court has observed as follows:

> *"2. Mr. Sunil Mishra, learned Additional Standing Counsel for Opposite Parties appearing on an advance notice states that as long as delay in filing the appeal is condoned, and provided the Petitioner complies with all the requirements of paying the taxes due, the 3B Return Form filed by the Petitioner will be accepted by the Opposite Parties.*
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> *3. In that view of the matter, the delay in Petitioner's invoking the proviso to Rule 23 of the Odisha Goods and Services Tax Rules (OGST Rules) is condoned and it is directed that subject to the Petitioner depositing all the taxes due and complying with other formalities, the GST return filed by the Petitioner, provided it is filed on or before 5th July, 2021, will be accepted by the Opposite Parties."*

2.7. It is stated by the petitioner that in exercise of power under Section 128 of the CGST Act, the amount of late fee payable by registered person for failure to furnish return in Form GSTR-3B for the month of July, 2017 onwards by the due date under Section 47 has been waived by virtue of Notification No.76/2018— Central Tax, dated 31.12.2018 issued by the Government of India in Ministry of Finance (Department of Revenue), whereby ninth proviso has been inserted by way of amendment *vide* Notification No.19/2021— Central Tax, dated 01.06.2021, which is to the following effect:

> *"Provided also that for the registered persons who failed to furnish the return in Form GSTR-3B for the months /quarter of July, 2017 to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the 31st day of August, 2021, the total amount of late fee under Section 47 of the said Act, shall stand waived which is in excess of five hundred rupees:"*

2.8. Relying on said proviso, it is, therefore, asserted that had the registration been live, the petitioner would have the occasion to furnish returns between the period from 01.06.2021 to 31.08.2021 in Form GSTR-3B for the months/quarter of July, 2017 to April, 2021.

2.9. Under such premise, the counsel for the petitioner praying for setting aside the Appellate Order (Annexure-1), would submit that given a chance, besides payment of tax, interest and penalty with late fee, all required returns can be furnished. Upon such compliance, the petitioner can be directed to make application under Section 30 for revocation of cancellation of registration.

3. It is stated at the Bar that many cases of this nature has been rejected by the Appellate Authority by passing a common order, as a consequence of which taxpayers even though are ready to deposit tax, interest and penalty with late fee and also furnish return(s), they are deprived of availing such advantage as is bestowed in the aforementioned notifications. Since the Bar sought to address the issue, this Court asked Sri Rudra Prasad Kar, Advocate to render assistance in this regard.

3.1. Mr. Rudra Prasad Kar, learned Advocate has placed the following suggestions by way of short note dated 25.08.2022:

"GST law being, a New Act, assessees are facing the difficulties in switching to procedural compliance electronically through internet on the GST Web-Portal. Considering the hardship faced by the assessees and more specifically due to COVID-19 pandemic, various amnesty schemes were introduced by the Government of India to ease the technical and procedural complicacies faced by the assessees. The provisions of the GST enactments and the rules made thereunder, read with various clarifications issued by the Central Government, pursuant to the decision of the GST Council and the Notification issued thereunder, also makes it clear that the intention is only to facilitate business and not to debar the assessees from coming back into GST fold. The purpose of GST registration is only to ensure that just taxes get collected on supplies of goods or services or both and is paid to the exchequer. Keeping these petitioners outside the bounds of the GST regime is a self-defeating move. It will be in the interest of the State to allow restoration of the Registration Certificate and facilitate business to grow.

The provisions of the GST enactments cannot be interpreted so as to deny the right to carry on Trade and Commerce to a citizen. 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 restrictions, can be imposed.

To deny such rights would militate against the rights under Article 14, read with Article 19(1)(g) and Article 21 of the Constitution of India.

Recognizing the difficulties, the Central Board of Indirect Taxes and Customs (CBIC) extended the time limit for filing application for revocation of cancellation of registration for all the orders passed on or before 12.06.2020 was granted time till 31.08.2020 from which date the period of limitation for revocation of registration certificate would be counted. As the application filed by the writ-applicants for revocation of cancellation of registration was looked into by a quasi judicial authority, the order of the Hon'ble Supreme Court extending the period of limitation in view of the COVID-19 pandemic would apply and in such circumstances, the limitation in accordance with the order passed by the Central Board of Indirect Taxes and Customs would also stand extended.

In view of the above and the various amnesty scheme notified by the Department, the Court may consider passing an order in consonance with the order of Hon'ble Supreme Court in Union of India & Another Vrs. FILCO Trade Centre Pvt. Ltd. & Another, SLP(C) No.31709-32710/2018, dated 22.07.2022.

The following are the humble suggestions:

1. *The Hon'ble Court may consider allowing 'three' months time to assessees/the registered persons, whose registration have been cancelled under clause (b) or clause (c) of sub-section (2) of Section 29 of the GST Act to apply for revocation of cancellation of registration from the date of passing of the order.*

2. *Accordingly, the GST Authorities/Concerned Officers may be directed to consider the application of revocation and allow the assessees to comply with the statutory requirements namely filing of returns, deposit of tax, interest, penalty and late fee within a further period of one month.*

3. *Authorities to take a pragmatic view and restore the R.Cs.*

It is submitted that the Government will not be put to any pecuniary loss/revenue loss, rather the above suggestions and

directions of this Hon'ble Court will be in the larger interest of trade, commerce and economic growth of the nation."

4. Mr. Rudra Prasad Kar, learned Advocate, brought attention of this Court to the Judgment of Hon'ble Madras High Court rendered in the case of *Tvl. Suguna Cutpiece Center Vrs. The Appellate Authority and Another, W.P.(C) No.25048 of 2021, etc. etc., vide Order dated 31.01.2022* reported at *2022 (61) GSTL 515 (Mad)* to demonstrate that in the said Judgment a batch of matters *qua* certain taxpayers, having failed to furnish returns, registration certificates had been cancelled in the years 2018 and 2019 in terms of Section 29(2)(c), and their appeals have also been rejected by the Appellate Authority on the ground of limitation; nonetheless, the said Court protected them by issue of writ of *mandamus* with certain conditions. He also referred to decisions of other High Courts where similar views have been expressed and the statute under consideration being a Central statute, the views so expressed can be taken cognizance of for the purpose of extending akin privilege to the similarly circumstanced taxpayers of this State. In furtherance thereof, he urged that many taxpayers of this State being in unison to deposit tax, interest and penalty with late fee as is required under the CGST Act and rules framed thereunder, and non-grant of such opportunity cannot be said to enure to the larger interest of the State exchequer and disposing of writ petition with a direction to the Registering Authority to restore the registration by setting aside the Appellate Order would not only meet interest of justice, but also it would not cause prejudice to the Revenue. Therefore, he requested for extending one-time benefit.

5. Copy of suggestions with short note was served on Mr. Subash Chandra Mohanty, learned Standing Counsel for the opposite parties, who on instruction, submitted that in the event the petitioner deposits the required tax, interest, penalty and late fee, and furnishes all the returns, subject to verification by the authority concerned, the revocation of registration, upon duly constituted application under Section 30 of the CGST Act, could be considered by the Registering Authority.

6. The CGST Act, 2017 was promulgated and brought into force with effect from 01.07.2017, which is an Act to make provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and the matters connected therewith or incidental thereto. Likewise, the Odisha Goods and Services Tax Act, 2017 (for brevity, "OGST Act") was enacted to make provision for levy and collection of tax on intra-State supply of goods or services or both by the State of Odisha and the matters connected therewith or incidental thereto. Thus, the resultant effect upon introduction of the CGST Act and the OGST Act is that certain other statutes including Odisha Value Added Tax Act, 2004 and the Odisha Entry Tax Act, 1999 which were imposing indirect taxes stood repealed and in their place indirect taxes are levied under the CGST Act and the OGST Act. The levy of tax on goods and services is being made by the Central Government under the provisions of the CGST Act, 2017 and concurrent power has been conferred on the State Government to levy goods and services tax under the provisions under the OGST Act. Relevant provisions involved for facilitating

adjudication of the issue raised in the present case do require to be mentioned.

Section 29

"Cancellation or suspension of registration.—

*(1) ****

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under Section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in Clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of Section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

Provided further that during pendency of the proceedings relating to cancellation of such period and in such manner as may be prescribed."

Section 30

"Revocation of cancellation of registration.—

(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,—

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).

(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the Central Goods and Services Tax Act shall be deemed to be a revocation of cancellation of registration under this Act."

Rule 22

"Cancellation of registration.—

(1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under Section 29, he shall issue a notice to such person in Form GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.

(2) The reply to the show cause notice issued under sub-rule (1) shall be furnished in Form REG-18 within the period specified in the said sub-rule.

(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in Form GST REG-19, within a period of thirty days from the date of application submitted under 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.

(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."

Rule 23

"Revocation of cancellation of registration.—

(1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of 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 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 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-24.

(4) 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."

7. The Hon'ble Gujarat High Court in the case of *Aggarwal Dyeing and Printing Works Vrs. State of Gujarat & 2 Other(s), R/Special Civil Application No. 18860 of 2021, vide Judgment dated 24.02.2022* discussed the provisions enshrined for registration with reference to the rules framed thereunder in the following manner:

"8.1 Scheme of the Act:

**** The related provisions for certificate of registration and its cancellation, under the said Act are as under:*

i. Section 2(107) defines the term "taxable person" means a person who is registered or liable to be registered under Section 22 or Section 24.

ii. Chapter VI pertains to Registration. Section 22 provides for person liable for registration. Section 23 pertains to person who shall not be liable for registration whereas Section 24 provides for compulsory registration in certain cases specified therein. Section 25 provides application to be made within period of thirty days and prescribes procedure to be followed for registration. Section 26 provides deemed registration.

iii. The Gujarat Goods and service Rules, 2017 has come into effect from 22nd June, 2017. Chapter III deals with subject "Registration". Rule 8 provides for Application for registration. Rule 10 provides for Issue of registration certificate. Rule 16 provides for suo motu registration.

iv. Section 29 confers power upon the proper officer for cancellation of Registration. Section 30 provides for revocation of cancellation of registration. Against the aforesaid substantive provisions prescribed under the Act, the corresponding rules framed thereunder are also required to be looked into.

v. Rule 20 provides for filing of application for cancellation of registration by the dealer. Rule 21 provides for Registration to be cancelled by the proper officer in certain cases. Rule 22 deals for procedure to be adhered to while proceeding for with cancellation of registration. Rule 23 deals with Revocation of cancellation of registration.

9. In light of the aforesaid provisions, we notice that registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the Government and to avail input tax credit for the taxes on his inward supplies. Without registration, a person can neither collect tax from his customers nor claim any input tax credit of tax paid by him. It appears that registration in GST is PAN based and State specific. Thus, supplier has to get himself registered in each of such State or Union Territory from where he effects supply. The Act empowers proper officer and registration granted under GST can be cancelled for specified reasons. The cancellation can either be initiated by the department on their own motion or the registered person can apply for cancellation of his registration.

9.1 From the bare reading of the Rules, 2017 along with statutory provision, the reasons for cancellation can be culled out as under:

a) a person registered under any of the existing laws, but who is not liable to be registered under the GST Act;

b) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of;

c) there is any change in the constitution of the business;

d) the taxable person (other than the person who has voluntarily taken registration under sub-section (3) of Section 25 of the CGST Act, 2017) is no longer liable to be registered;

e) a registered person has contravened such provisions of the Act or the rules made thereunder;

f) a person paying tax under composition levy has not furnished returns for three consecutive tax periods;

g) any registered person, other than a person paying tax under composition levy has not furnished returns for a continuous period of six months;

h) any person who has taken voluntary registration under sub-section (3) of Section 25 has not commenced business within six months from the date of registration;

i) registration has been obtained by means of fraud, willful misstatement or suppression of facts.

9.2 The procedure for cancellation of registration can be summarized as under:

i. A person already registered under any of the existing laws (Central excise, Service tax, VAT etc.), but who now is not liable to be registered under the GST Act has to submit an application electronically by 31st December 2017, in Form GST REG-29 at the common portal for the cancellation of registration

granted to him. The Superintendent of Central Tax shall, after conducting such enquiry as deemed fit, cancel the said registration.

ii. The 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 cancellation of registration under Central Goods and Services Tax Act.

iii. In the event, the Superintendent of Central Tax has reasons to believe that the registration of a person is liable to be cancelled, a notice to such person in Form GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled; will be issued.

iv. The reply to the show cause notice issued has to be furnished by the registered person in Form REG-18 within a period of seven working days. iv. In case the reply to the show cause notice is found to be satisfactory, the Superintendent of Central Tax will drop the proceedings and pass an order in Form GST REG-20.

v. However, when the person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the Superintendent of Central Tax will issue an order in Form GST REG-19, within a period of thirty days from the date of application or, as the case may be, the date of the reply to the show cause issued, 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.

vi. The registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs 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.

vii. 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 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.

viii. The cancellation of registration shall not affect the liability of the person to pay tax and other dues 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.

9.3 At the same time, the statute also provides for revocation of cancellation:

i. When the registration has been cancelled by the Proper Officer (Superintendent of Central Tax) on his own motion and not on the basis of an application, then the registered person, whose registration has been cancelled, can submit an application for revocation of cancellation of registration, in Form GST REG-21, to the Proper Officer (Assistant or Deputy Commissioners of Central Tax), within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

ii. However, if the registration has been cancelled for failure to furnish returns, application for revocation shall be filed, only after 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.

iii. On examination of the application if the Proper Officer (Assistant or Deputy Commissioners of Central Tax) is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, then 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.

iv. However, if on examination of the application for revocation, if the Proper Officer (Assistant or Deputy Commissioners of Central Tax) is not satisfied then he will issue a notice in Form GST REG–23 requiring the applicant to show cause as to why the application submitted for revocation should not be rejected and the applicant has to furnish the reply within a period of seven working days from the date of the service of the notice in Form GST REG-24.

v. Upon receipt of the information or clarification in Form GST REG-24, the Proper Officer (Assistant or Deputy Commissioners of Central Tax) shall dispose of the application within a period of thirty days from the date of the receipt of such information or clarification from the applicant. In case the information or clarification provided is satisfactory, the Proper Officer (Assistant or Deputy Commissioners of Central Tax) shall dispose the application as per para (iii) above. In case it is not satisfactory the applicant will be mandatorily given an opportunity of being heard, after which the Proper Officer (Assistant or Deputy Commissioners of Central Tax) after recording the reasons in writing may by an order in Form GST REG-05, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

vi. 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 Central Goods and Services Tax Act.

10. Thus, upon appreciation of the scheme of Act, where specific forms have been prescribed at each stage right from registration, cancellation and revocation of cancellation of registration, the same are to be strictly adhered to. At the same time, it is equally important that the proper officer empowered under the said Act adheres to the principles of natural justice.

*11. At the outset, we notice that it is settled legal position of law that reasons are heart and soul of the order and non-communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice. ***"*

7.1. A conjoint reading of the provisions referred to above juxtaposed with provisions contained in Section 39 read with Rule 61 would clearly indicate that the petitioner is bound to file return for the month concerned on or before the 20th of the succeeding month concerned. Further a reading of Section 29(2)(c) of the CGST Act would also disclose that it is mandated by the Legislature that if there is continuous default of six months on the part of the assessee in filing returns, then the competent authority can invoke the power conferred under Section 29(2)(c) of the said Act to cancel the registration.

7.2. In the instant case, it is transpired from pleading in the writ petition that though the Superintendent, Berhampur-I Range passed order cancelling the registration with effect from 15.10.2019, the petitioner has been allowed to deposit an amount of Rs.3,09,360/- with late fee of Rs.5,000/- in respect of the tax liability for the period October, 2019 and the return in connection

with cancelled GSTIN being 21ALPPP8146E2ZY was allowed to be furnished on 22.04.2021.

8. It appears, being confused on account of newly introduced taxation procedure, instead of taking recourse to the remedy available under Section 30 read with Rule 23 for revocation of cancellation of registration, appeal under Section 107 was preferred by the petitioner.

8.1. In the order of cancellation of registration dated 15.10.2019 (Annexure-4) it has been reflected as follows:

"This has reference to your reply dated 31.08.2019 in response to the notice to show cause dated 21.08.2019."

However, without assigning any reason for considering said response, the proper officer, Superintendent, has cancelled the registration.

8.2. The appeal preferred by the petitioner has been rejected with the following observation:

"8. I find that the said appellant Nos.1 to 32 did not file the requisite returns as indicated in the respective show cause notice issued to them. Therefore, their registrations were cancelled. They also did not file application for revocation of cancellation of registration within the prescribed time. It is also noticed that the said appellants have not filed the present appeals within the stipulated time limit prescribed under Section 107(1) of CGST Act, 2017.

9. As per the provisions of Section 107(1) of the CGST Act, a person is required to file appeal against an order passed by an adjudicating authority within the time limit of three months from the date on which order is communicated. It is noted that Hon'ble Supreme Court in its order dated 8th March, 2021 has extended the limitation period prescribed

under general law of limitation or under any special (both Central and State) due to the onset of Covid-19 virus. Hon'ble Supreme Court in the said order has directed that in computing the period of limitation for any appeal, the period from 15.03.2020 to 14.03.0021 shall stand excluded. Further, it has been held in the said order that in cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have limitation period of 90 days from 15.3.2021.

10.1 It is also noted that the Hon'ble Supreme Court in its order dated 27.04.2021 has restored its earlier order dated 08.03.20 21 in view of the extraordinary situation caused by the second outburst of COVID-19 virus. Hon'ble Supreme Court has ruled that in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as described 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. Hon'ble Supreme Court has further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the limitation period.

10.2 In pursuance of the orders of the Hon'ble Supreme Court, Central Board of Indirect Taxes and Customs (CBIC) has issued a circular No. 157/13/2021-GST dated 20.07.2021. In the said circular, it is clarified that period of limitation extended by Supreme Court in its order dated 27.04.2021 shall be applicable in respect of any appeal before the appellate authority under the CGST Act. The relevant portion of the said Circular is reproduced as under:

> *"5. In other words, the extension of timelines granted by the Hon'ble Supreme Court vide its order dated 27.04.2021 is applicable in respect of any appeal which is required to be filed before Joint/Additional Commissioner (Appeals), Commissioner (appeals), appellate authority for advance rulings, tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required to be undertaken, and is not*

applicable to any other proceedings under GST laws."

11. Thus, taking into account the extension of limitation period granted by the CBIC and Hon'ble Supreme Court, I find that the appeals by the above Appellant Nos. 1 to 32 are filed beyond the prescribed period of limitation. Therefore, I am constrained to reject the said appeals filed by the Appellant No. 1 to 32. Held accordingly."

8.3. It is apparent from the above that while rejecting appeals of 32 taxpayers on 07.10.2021 by a common order, the Appellate Authority had no occasion to notice the further order being passed on 10.01.2022 by the Hon'ble Supreme Court taking into consideration third surge of COVID-19 virus. Said order dated 10.01.2022 having bearing on the case at hand, the appellate order deserves to be set aside.

8.4. Significant it is to have reference to Notification No.76/2018—Central Tax [GSR 1253(E)], dated 31st December, 2018 issued in exercise of power conferred under Section 128 along with pertinent amendments made thereof subsequently. For better appreciation relevant portions of said notification are extracted herein below to appreciate that the Government extended the benefit to taxpayers to furnish the returns between the period from 1st day of July, 2020 to 30th of September, 2020 who failed to furnish returns for the months of July, 2017 to January, 2020 by the due date:

"Government of India Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
Notification No. 76/2018 – Central Tax
New Delhi, the 31st December, 2018

G.S.R.1253(E),– In exercise of the powers conferred by Section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council , and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 28/2017 – Central Tax, dated the 1st September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 1126 (E), dated the 1st September, 2017, notification of the Government of India in the Ministry of Finance, Department of Revenue No. 50/2017– Central Tax, dated the 24th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 1326 (E), dated the 24th October, 2017 and notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 64/2017– Central Tax, dated the 15th November, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R.1420(E), dated the 15th November, 2017, except as respects things done or omitted to be done before such supersession, hereby waives the amount of late fee payable by any registered person for failure to furnish the return in Form GSTR-3B for the month of July, 2017 onwards by the due date under Section 47 of the said Act, which is in excess of an amount of twenty-five rupees for every day during which such failure continues:

Provided that where the total amount of central tax payable in the said return is nil, the amount of late fee payable by such registered person for failure to furnish the said return for the month of July, 2017 onwards by the due date under Section 47 of the said Act shall stand waived to the extent which is in excess of an amount of ten rupees for every day during which such failure continues:

Provided further that the amount of late fee payable under Section 47 of the said Act shall stand waived for the registered persons who failed to furnish the return in Form GSTR-3B for the months of July, 2017 to September, 2018 by the due date but furnishes the said return between the period from 22nd December, 2018 to 31st March, 2019.

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[1][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 1st 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 1st day of July, 2020 to 30th day of September, 2020.]

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[2][Provided also that for the registered persons who failed to furnish the return in Form GSTR-3B for the months/quarter of July, 2017 to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the 31st day of August, 2021, the total amount of late fee under Section 47 of the said Act, shall stand waived which is in excess of five hundred rupees:

Provided also that where the total amount of central tax payable in the said return is nil, the total amount of late fee under Section 47 of the said Act shall stand waived which is in excess of two hundred and fifty rupees for the registered persons who failed to furnish the return in Form GSTR-3B for the months/quarter of July, 2017 to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the 31st day of August, 2021:

Provided also that the total amount of late fee payable under Section 47 of the said Act for the tax period June, 2021 onwards or quarter ending June, 2021 onwards, as the case may be, shall stand waived which is in excess of an amount as specified in column (3) of the Table given below, for the class of registered persons mentioned in the corresponding entry in column (2) of the said Table, who fail to furnish the returns in Form GSTR-3B by the due date, namely: —

S. No. (1)	*Class of registered persons (2)*	*Amount (3)*
1.	*Registered persons whose total amount of central tax payable in the said return is nil*	*Two hundred and fifty rupees*
2.	*Registered persons having an aggregate turnover of up to rupees 1.5 crores in the preceding financial year, other than those covered under S. No. 1*	*One thousand rupees*
3.	*Taxpayers having an aggregate turnover of more than rupees 1.5 crores and up to rupees 5 crores in the preceding financial year, other than those covered under S. No. 1*	*Two thousand and five hundred rupees]*

[F.No.20/06/16/2018-GST]
(Dr. Sreeparvathy S.L.)
Under Secretary
to the Government of India"

1. Inserted by Notification No.52/2020— Central Tax, dated 24.06.2020.
2. Inserted by Notification No.19/2021— Central Tax, dated 01.06.2021.

8.5. Minute reading of above mentioned notification gives indication that the Government have been considerate in extending the benefit to the taxpayers who could not file returns for the months/quarter(s) of July, 2017 to April, 2021 within statutory period specified. As the registration certificate of the petitioner stood cancelled since 15.10.2019 by the time amendments to Notification No.76/2018— Central Tax [GSR 1253(E)], dated 31st December, 2018 came into force, there was no scope left for availing the advantage conferred thereunder.

8.6. Perusal of Common Order dated 31.01.2022 passed in the case of *Tvl. Suguna Cutpiece Center Vrs. The Appellate Authority and Another, 2022 (61) GSTL 515 (Mad)* reveals that the Hon'ble

Madras High Court considered *inter alia* the cases of taxpayers who have filed writ petition "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". Relevant it is to quote the following from said common order:

"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. ****

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 assessees encountered the difficulties in switching to procedural compliance electronically through Internet on the GST Web-Portal.

174. Considering the hardship faced by the assessees, 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 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 up to 31.03.2019 and application for revocation was not filed 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.

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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 cancellation of registration under the other GST enactments.

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184. Nationwide, lockdown was imposed on 24.03.2020 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 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 up to 12.06.2020. ****

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.

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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
(Department of Revenue)
Central Board of Indirect Taxes and Customs
Notification No 92/2020— Central Tax
New Delhi, the 22nd December, 2020

S.O. 4643(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. ****

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 01.01.2021.

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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:

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.600(E).– In partial modification of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 35/2020-Central Tax, dated the 3rd April, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i), vide number G.S.R. 235(E), dated the 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 1st May, 2021, in exercise of the powers conferred by Section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and Section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017), the Government, on the recommendations of the Council, hereby notifies that where a registration has been cancelled under clause (b) or (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 1st 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.

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

198. *The Central Government in the above Notification took a decision to extend the time limit up to 30.09.2021 for the persons like petitioners. However, this was applicable to*

those registrations 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 up to 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:

> *"3. Applications covered under the scope of the said notification*
>
> *3.1. The said notification specifies that where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, the time limit for filing of application for revocation of cancellation of registration is extended to 30th September, 2021. Accordingly, it is clarified that the benefit of said notification is extended to all the cases where cancellation of registration has been done under clause (b) or clause (c) of sub-section (2) of Section 29 of the CGST Ac, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021. It is further clarified that the benefit of notification would be applicable in those cases also where the application for revocation of cancellation of registration is either pending with the proper officer or has already been rejected by the proper officer. It is further clarified that the benefit of notification would also be available in those cases which are pending with the appellate authority or which have been rejected by the appellate authority. In other words, the date for filing application for revocation of cancellation of registration in all cases, where registration has been cancelled under clause (b) or clause (c) of sub-section (2) of Section 29 of*

CGST Act, 2017 and where the due date of filing of application for revocation of cancellation of registration falls between 1st March, 2020 to 31st August, 2021, is extended to 30th September, 2021, irrespective of the status of such applications. As explained in this para, the said notification would be applicable in the following manner:

(i) application for revocation of cancellation of registration has not been filed by the taxpayer—

In such cases, the applications for revocation can be filed up to the extended timelines as provided vide the said notification. Such cases also cover those instances where an appeal was filed against order of cancellation of registration and the appeal had been rejected.

(ii) application for revocation of cancellation of registration has already been filed and which are pending with the proper officer—

In such cases, the officer shall process the application for revocation considering the extended timelines as provided vide the said notification.

(iii) application for revocation of cancellation of registration was filed, but was rejected by the proper officer and taxpayer has not filed any appeal against the rejection—

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.

(iv) application for revocation of cancellation of registration was filed, the proper officer rejected the application and appeal against the rejection order is pending before appellate authority—

In such cases, appellate authorities shall take the cognizance of the said notification for extension of timelines while deciding the appeal.

(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.

4. It may be recalled that, with effect from 01.01.2021, proviso to sub-section (1) of Section 30 of the CGST Act has been inserted which provides for extension of time for filing application for revocation of cancellation of registration by 30 days by Additional/ Joint Commissioner and by another 30 days by the Commissioner. Doubts have been raised whether the said notification has extended the due date in respect of initial period of 30 days for filing the application (in cases where registration has been cancelled under clause (b) or clause (c) of sub-section (2) of Section 29 of CGST Act, 2017) under sub-section (1) of Section 30 of the CGST Act or whether the due date of filing applications for revocation of registration can be extended further for the period of 60 days (30 + 30) by the Joint Commissioner/ Additional Commissioner/ Commissioner, as the case may be, beyond the extended date of 30.09.2021. It is clarified that:

(i) where the thirty days' time limit falls between 1st March, 2020 to 31st December, 2020, there is no provision available to extend the said time period of 30 days under Section 30 of the CGST Act. For such cases, pursuant to the said notification, the time limit to apply for revocation of cancellation of registration

stands extended up to 30th September, 2021 only; and

(ii) where the time period of thirty days since cancellation of registration has not lapsed as on 1st January, 2021 or where the registration has been cancelled on or after 1st January, 2021, the time limit for applying for revocation of cancellation of registration shall stand extended as follows:

(a) Where the time period of 90 days (initial 30 days and extension of 30 + 30 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended upto 30th September 2021, without any further extension of time by Joint Commissioner/ Additional Commissioner/ Commissioner.

(b) Where the time period of 60 days (and not 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended up to 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Commissioner, on being satisfied, as per proviso to sub-section (1) of Section 30 of the CGST Act.

(c) Where the time period of 30 days (and not 60 days or 90 days) since cancellation of registration has elapsed by 31.08.2021, the time limit to apply for revocation of cancellation of registration stands extended up to 30th September 2021, with the extension of timelines by another 30 days beyond 30.09.2021 by the Joint/ Additional

Commissioner and another 30 days by the Commissioner, on being satisfied, as per proviso to sub-section (1) of Section 30 of the CGST Act."

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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 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 an 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 statues or notifications, if any.

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

Wherever any appeal is required to 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."

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, 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 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."

8.7. In the case of *Aarcity Builders Private Limited Vrs. Union of India and Others, CWP No.19029 of 2021,* the Hon'ble Punjab and Haryana High Court at Chandigarh *vide* Judgment dated 09.12.2021 taking note of Notification No.34/2021— Central Tax, dated 29.08.2021 and the Central Goods and Services Tax (Fifth Removal of Difficulties) Order, 2019 observed as follows:

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

8.8. In the context of limitation fixed for filing written statement under the Code of Civil Procedure, 1908, in the case of *Prakash*

Corporates Vrs. Dee Vee Projects Ltd., (2022) 5 SCC 112 = (2022) 1 SCC (L&S) 771 = 2022 SCC OnLine SC 180 it has been stated as follows:

"21. While explaining the sweep and mandate of these provisions, this Court said : (SCG Contracts (India) (P) Ltd. Vrs. K.S. Chamankar Infrastructure (P) Ltd., (2019) 12 SCC 210 = (2020) 1 SCC (Civ) 237, SCC p. 214, para 8)

> *"8. ... A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.*
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23. If the aforesaid provisions and explained principles are literally and plainly applied to the facts of the present case, the 120th day from the date of service of summons came to an end with 06.05.2021 and the defendant, who had earlier been granted time for filing its written statement on payment of costs, forfeited such right with the end of 120th day i.e. 06.05.2021. However, it is required to be kept in view that the provisions aforesaid and their interpretation in SCG Contracts (India) (P) Ltd. Vrs. K.S. Chamankar Infrastructure (P) Ltd., (2019) 12 SCC 210 = (2020) 1 SCC (Civ) 237 operate in normal and non-extraordinary circumstances with the usual functioning of courts. It is also noteworthy that the above referred provisions of CPC are not the only provisions of law which lay down mandatory

timelines for particular proceedings. The relevant principles, in their normal and ordinary operation, are that such statutory timelines are of mandatory character with little, or rather no, discretion with the adjudicating authority for enlargement."

Notwithstanding such dicta, taking into consideration irregular functioning of the Courts due to the COVID-19 pandemic situation, the Hon'ble Supreme Court in the said reported case [*Prakash Corporates, (supra)*] observed as follows:

"25. It is not a matter of much debate that, starting from or around the month of December 2019, the entire humanity faced a situation which was unprecedentedly unfavourable and unpleasant to almost all the persons and the institutions. It was the outbreak of Covid-19 Pandemic that engulfed practically the entire globe; and the highly contagious virus called SARS-CoV-2 started playing havoc with its rapid transmission from one person to another. Covid-19 carried with it the scary possibilities of irretrievable damage to the respiratory systems, even leading to deaths. In fact, the number of fatalities due to this infection had been beyond imagination with survivors also living under a constant threat. The unprecedented health emergencies due to highly transmissible Covid-19 Virus led the administrations to take various containment measures, including those of travel restrictions and lockdowns as also of isolating the infected persons while putting their close contacts in quarantine.

26. We need not elaborate on the havoc created by Covid-19 but the relevant aspect for the present purpose is that with Covid-19, the movement of persons and working of almost all the institutions landed in such difficulties which were neither foreseen nor guarded against.

27. When the movements and gatherings of persons were fraught with dangers and when lockdowns became inevitable, the institutions related with the task of administration of justice were also required to respond to the challenges thrown by this pandemic. In this regard, this

Court, apart from taking various measures of containment, also took note of the practical difficulties of the litigants and their lawyers; and this led to the suo motu order dated 23.03.2020 in Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801.

27.1. In the consciously worded order dated 23.03.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801], this Court, while taking note of the difficulties likely to be faced by the litigants in filing their petitions/applications/suits/appeals/ proceedings within the period of limitation, ordered that the period of limitation in all such proceedings, irrespective of the limitation prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15.03.2020 until further orders. This order was passed in exercise of plenary powers of this Court under Article 142 of the Constitution of India, which are complementary to other powers specifically conferred by various statutes. Even if the above referred provisions of CPC had not been stated in specific terms, the general mandate of the order dated 23.03.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] was to extend the period of limitation provided in any law for the time being in force, irrespective of whether the same was condonable or not, w.e.f. 15.03.2020 and until further orders.

27.2. Noticeably, on 06.05.2020, when special periods of limitation under different enactments like the 1996 Act were referred to, this Court further ordered [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 9 = (2021) 3 SCC (Cri) 799] that the limitation prescribed thereunder shall stand extended w.e.f. 15.03.2020 until further orders. It was a time when the country was under the grip of lockdown, and the Court provided that in case limitation had expired after 15.03.2020, the period between 15.03.2020 and lifting of lockdown in the jurisdictional area would be extended for a period of 15 days after lifting of lockdown.

27.3. Further, on 10.07.2020 [Cognizance for Extension of Limitation, In re, (2020) 9 SCC 468], this Court enlarged

the scope of initial order in relation to the timelines fixed in Section 29-A and Section 23(4) of the 1996 Act. Significantly, Section 23(4) of the 1996 Act mandates that the statement of claim and defence shall be completed within a time period of six months. Yet further, it was also provided that the time for completing the process of compulsory pre-litigation mediation under Section 12-A of the Commercial Courts Act, 2015 shall stand extended for 45 days after lifting of lockdown.

27.4. On 08.03.2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 = (2021) 3 SCC (Civ) 40 = (2021) 2 SCC (Cri) 615 = (2021) 2 SCC (L&S) 50], suggestions were made before this Court about lifting of lockdowns and likely return of normalcy and, therefore, this Court considered it proper to dispose of the said suo motu petition with specific directions that while computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 to 14.03.2021 would stand excluded. Though the said order dated 08.03.2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 = (2021) 3 SCC (Civ) 40 = (2021) 2 SCC (Cri) 615 = (2021) 2 SCC (L&S) 50] was passed with a belief that the adverse effects of the pandemic were receding and normalcy was returning but, the spread of virus continued and this led to an exponential surge in Covid-19 cases; and to the second wave of pandemic in the country around the months of March-April 2021. In this turn of events, this Court again took up the matter in SMWP No. 3 of 2020 on MA No. 665 of 2021, as moved by the Supreme Court Advocates-on-Record Association and passed the necessary order on 27.04.2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 = 2021 SCC OnLine SC 373] in revival of the previous orders.

27.5. At this juncture, we are impelled to refer to the fact that much before passing of the order dated 27.04.2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 = 2021 SCC OnLine SC 373] by this Court, the alarming scenario due to the second wave of pandemic was indeed taken note of by the High Court of Chhattisgarh; and that the High Court issued the above-referred

administrative order dated 05.04.2021 for curtailed/ truncated functioning of the High Court as also the subordinate courts. We shall elaborate on this aspect in the next segment of discussion but, have indicated the same at this juncture to highlight the fact that even before passing of the order dated 27.04.2021 by this Court in Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 = 2021 SCC OnLine SC 373, the trial court dealing with the subject suit was already under containment measures; and could not have functioned normally.

27.6. Reverting to the orders passed by this Court, noticeable it is that on 27.04.2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 = 2021 SCC OnLine SC 373], this Court restored the order dated 23.03.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] and it was directed, in continuation of the order dated 08.03.2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 = (2021) 3 SCC (Civ) 40 = (2021) 2 SCC (Cri) 615 = (2021) 2 SCC (L&S) 50], that the periods 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. Ultimately, the said MA No. 665 of 2021 was disposed of on 23.09.2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 = 2021 SCC OnLine SC 947] with this Court issuing directions similar to those contained in the order dated 08.03.2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 = (2021) 3 SCC (Civ) 40 = (2021) 2 SCC (Cri) 615 = (2021) 2 SCC (L&S) 50] but while providing that 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.

27.7. We are not elaborating on other directions issued by this Court but, when read as a whole, it is but clear that the anxiety of this Court had been to obviate the hardships likely to be suffered by the litigants during the onslaughts of this pandemic. Hence, the legal effect and coverage of the orders passed by this Court in SMWP No. 3 of 2020 cannot be unnecessarily narrowed and rather, having regard to

their purpose and object, full effect is required to be given to such orders and directions. [To complete the scenario, we may indicate in the passing that even after we had heard this matter, there had been re-surge of Covid-19 cases with spread of a new variant of the virus. The drastic re-surge in the number of Covid cases has led this Court to again deal with the matter in SMWP No. 3 of 2020 on an application bearing No. 21 of 2022; and by the order dated 10.01.2022 [Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117 = (2022) 2 SCC (Civ) 46 = (2022) 1 SCC (Cri) 580 = (2022) 1 SCC (L&S) 501], this Court again restored the principal order dated 23.03.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] and in continuation of the previous orders, has further directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Be that as it may, the fresh order in SMWP No. 3 of 2020 need not be elaborated for the present purpose.]

28. *As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23.03.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801], this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15.03.2020 but, while concluding the matter on 23.09.2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 = 2021 SCC OnLine SC 947], this Court specifically provided for exclusion of the period from 15.03.2020 till 02.10.2021. A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the*

one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government [Vide Section 15 of the Limitation Act, 1963]). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed.

28.1. Having regard to the purpose for which this Court had exercised the plenary powers under Article 142 of the Constitution of India and issued necessary orders from time to time in SMWP No. 3 of 2020, we are clearly of the view that the period envisaged finally in the order dated 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 = 2021 SCC OnLine SC 947] is required to be excluded in computing the period of limitation even for filing the written statement and even in cases where the delay is otherwise not condonable. It gets perforce reiterated that the orders in SMWP No. 3 of 2020 were of extraordinary measures in extraordinary circumstances and their operation cannot be curtailed with reference to the ordinary operation of law.

28.2. In other words, the orders passed by this Court on 23.03.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] , 06.05.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 9 = (2021) 3 SCC (Cri) 799], 10.07.2020 [Cognizance for Extension of Limitation, In re, (2020) 9 SCC 468] , 27.04.2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 = 2021 SCC OnLine SC 373] and 23.09.2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 = 2021 SCC OnLine SC 947] in SMWP No. 3 of 2020 leave nothing to doubt that special and extraordinary measures were provided by this Court for advancing the cause of justice in the wake of challenges thrown by the pandemic; and their applicability cannot be denied in relation to the period prescribed for filing the written statement. It would be unrealistic and illogical to assume that while this Court has provided for exclusion of period for institution of the suit and therefore, a suit otherwise filed beyond limitation (if the limitation had

expired between 15.03.2020 to 02.10.2021) could still be filed within 90 days from 03.10.2021 but the period for filing written statement, if expired during that period, has to operate against the defendant.

28.3. Therefore, in view of the orders passed by this Court in SMWP No. 3 of 2020, we have no hesitation in holding that the time-limit for filing the written statement by the appellant in the subject suit did not come to an end on 06.05.2021.

29. It is also noteworthy that even before the scope of the orders passed in SMWP No. 3 of 2020 came to be further elaborated and specified in the orders dated 08.03.2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 = (2021) 3 SCC (Civ) 40 = (2021) 2 SCC (Cri) 615 = (2021) 2 SCC (L&S) 50] and 23.09.2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 = 2021 SCC OnLine SC 947], this Court dealt with an akin scenario in SS Group (P) Ltd. Vrs. Aaditiya J. Garg, (2022) 11 SCC 445 = 2020 SCC OnLine SC 1050, decided on 17.12.2020. In that case, in terms of Section 38(2)(a) of the Consumer Protection Act, 2019, 30 days' time provided for filing the written statement expired on 12.08.2020 and the extendable period of 15 days also expired on 27.08.2020. Admittedly, the written statement was filed on 31.08.2020, which was beyond the permissible period of 45 days. The Constitution Bench of this Court has held in New India Assurance Co. Ltd. Vrs. Hilli Multipurpose Cold Storage (P) Ltd., (2020) 5 SCC 757 = (2020) 3 SCC (Civ) 338 that the Consumer Court has no power to extend the time for filing response to the complaint beyond 45 days. After taking note of the applicable provisions of law as also the mandate of the Constitution Bench, this Court referred to the orders until then passed in SMWP No. 3 of 2020 and held that the limitation for filing written statement would be deemed to have been extended.

30. This Court, inter alia, observed and held as follows: [SS Group (P) Ltd. Vrs. Aaditiya J. Garg, (2022) 11 SCC 445 = 2020 SCC OnLine SC 1050], SCC paras 10-11)

"10. In the present matter, it is an admitted fact that the period of limitation of 30 days to file the written statement had expired on 12.08.2020 and the extended period of 15 days expired on 27.08.2020. This period expired when the order dated 23.03.2020 passed by this Court in Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801 was continuing.

11. In view of the aforesaid, in our opinion, the limitation for filing the written statement in the present proceedings before the National Commission would be deemed to have been extended as it is clear from the order dated 23.03.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] that the extended period of limitation was applicable to all petitions/ applications/suits/appeals and all other proceedings. As such, the delay of four days in filing the written statements in the pending proceedings before the National Commission deserves to be allowed, and is accordingly allowed."

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32.2. In fact, in S. Kasi Vrs. State, (2021) 12 SCC 1 = 2020 SCC OnLine SC 529, this Court also noticed that a coordinate Bench of the same High Court had already held [Settu Vrs. State, 2020 SCC OnLine Mad 1026] that the said order dated 23.03.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] did not cover the offences for which Section 167 CrPC was applicable but, in the order [S. Kasi Vrs. State, 2020 SCC OnLine Mad 1244] impugned, the other learned Single Judge of the same High Court took a view contrary to the earlier decision of the coordinate Bench; and that was found to be entirely impermissible. In any case, the said decision, concerning the matter of personal liberty referable to Article 21 of the Constitution of India and then, relating to the proceedings to be undertaken by an investigating officer, cannot be applied to the present case relating to the matter of filing written statement by the defendant in a civil suit.

33. So far as the decision of this Court in Sagufa Ahmed Vrs. Upper Assam Plywood Products (P) Ltd., (2021) 2 SCC 317 = (2021) 2 SCC (Civ) 178 is concerned, a few relevant factors related with the said case need to be noticed. In that case, the appellants had moved an application before the Guwahati Bench of the National Company Law Tribunal for winding up of the respondent company. The petition was dismissed on 25.10.2019 [Sagufa Ahmed Vrs. Upper Assam Plywood Products (P) Ltd., 2019 SCC OnLine NCLT 749]. The appellants applied for a certified copy of the order dated 25.10.2019 [Sagufa Ahmed Vrs. Upper Assam Plywood Products (P) Ltd., 2019 SCC OnLine NCLT 749] only on 21.11.2019 or 22.11.2019 and received the certified copy of the order through their counsel on 19.12.2019. However, the appellants filed the statutory appeal before the National Company Law Appellate Tribunal only on 20.07.2020 with an application for condonation of delay. The Appellate Tribunal dismissed [Sagufa Ahmed Vrs. Upper Assam Plywood Products (P) Ltd., 2020 SCC OnLine NCLAT 609] the application for condonation of delay on the ground that it had no power to condone the delay beyond a period of 45 days. Consequently, the appeal was also dismissed. In that case, it was indisputable that even while counting from 19.12.2019, the period of 45 days expired on 02.02.2020 and another period of 45 days, for which the Appellate Tribunal could have condoned the delay, also expired on 18.03.2020. To overcome this difficulty, the appellants relied upon the aforesaid order dated 23.03.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801].

33.1. This Court observed that the appellants were not entitled to take refuge under the above order in SMWP No. 3 of 2020 because what was extended was only the period of limitation and not the period up to which delay could be condoned in exercise of discretion conferred by the statute. This Court said thus: [Sagufa Ahmed Vrs. Upper Assam Plywood Products (P) Ltd., (2021) 2 SCC 317 = (2021) 2 SCC (Civ) 178], SCC p. 322, para 17)

> *"17. ...What was extended by the above order [Cognizance for Extension of Limitation, In re,*

(2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] of this Court was only "the period of limitation" and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is vigilantibus et non dormientibus jura subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them."

33.2. One of the significant facts to be noticed is that the said decision in Sagufa Ahmed Vrs. Upper Assam Plywood Products (P) Ltd., (2021) 2 SCC 317 = (2021) 2 SCC (Civ) 178 was rendered by a three-Judge Bench of this Court much before the aforesaid final orders dated 08.03.2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 = (2021) 3 SCC (Civ) 40 = (2021) 2 SCC (Cri) 615 = (2021) 2 SCC (L&S) 50] and 27.09.2021 (sic 27.04.2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 = 2021 SCC OnLine SC 373]) in SMWP No. 3 of 2020 by another three-Judge Bench of this Court. In those final orders, this Court not only provided for the extension of period of limitation but also made it clear that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 to 02.10.2021 shall stand excluded. Such proposition of exclusion, which occurred in the later orders, was not before this Court in Sagufa Ahmed Vrs. Upper Assam Plywood Products (P) Ltd., (2021) 2 SCC 317 = (2021) 2 SCC (Civ) 178, which was decided much earlier i.e. on 18.09.2020.

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34. On behalf of the respondent, much emphasis has been laid on the submission that the appellant was regularly

appearing in the Court and, therefore, cannot take advantage of the orders passed in SMWP No. 3 of 2020. It is true that the appellant had indeed caused appearance in the Court in response to the summons and sought time for filing its written statement but at the same time, it is also undeniable that at the relevant point of time, the second wave of pandemic was simmering and then, it engulfed the country with rather unexpected intensity and ferocity. Then, on 27.04.2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 = 2021 SCC OnLine SC 373], this Court restored the operation of the order dated 23.03.2020 in Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801. Putting all these factors together, we are unable to accept the submissions made on behalf of the respondent that because of earlier appearance or prayer for adjournment, the appellant-defendant would not be entitled to the relaxation available under the extraordinary orders passed by this Court."

8.9. Noteworthy here to take note of the Order dated 10.01.2022 passed in *Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117 = (2022) 1 SCC (Cri) 580 = (2022) 2 SCC (Civ) 46 = (2022) 1 SCC (L&S) 501 = 2022 SCC OnLine SC 27,* which requires to be reproduced hereunder:

"1. In March 2020, this Court took suo motu cognizance of the difficulties that might be faced by the litigants in filing petitions/applications/suits/appeals/all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the Covid-19 Pandemic.

2. On 23.03.2020, this Court directed [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] extension of the period of limitation in all proceedings before courts/tribunals including this Court w.e.f. 15.03.2020 till further orders. On 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 = (2021) 3 SCC (Civ) 40 = (2021) 2 SCC (Cri)

615 = (2021) 2 SCC (L&S) 50] , the order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.

3. *Thereafter, due to a second surge in Covid-19 cases, the Supreme Court Advocates-on-Record Association (SCAORA) intervened in the suo motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] relaxing limitation. The aforesaid Miscellaneous Application No. 665 of 2021 was disposed of by this Court vide order dated 23.09.2021 [Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947], wherein this Court extended the period of limitation in all proceedings before the courts/tribunals including this Court w.e.f. 15.03.2020 till 02.10.2021.*

4. *The present miscellaneous application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the Covid-19 and the drastic surge in the number of Covid cases across the country. Considering the prevailing conditions, the applicants are seeking the following:*

   (i) *Allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801; and*

   (ii) *Allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 = 2021 SCC OnLine SC 373; and*

   (iii) *Pass such other order or orders as this Hon'ble Court may deem fit and proper.*

5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1. The order dated 23.03.2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 = (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 08.03.2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 = (2021) 3 SCC (Civ) 40 = (2021) 2 SCC (Cri) 615 = (2021) 2 SCC (L&S) 50], 27.04.2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 = 2021 SCC OnLine SC 373] and 23.09.2021 [Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947] , it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

5.3. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

5.4. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A 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.

6. *As prayed for by the learned Senior Counsel, MA No. 29 of 2022 is dismissed as withdrawn."*

8.10. It is observed that the order of cancellation of registration was passed with effect from 15.10.2019 and in terms of Section 107 the petitioner was required to file the appeal within three months from the date of communication of the order and further condonable period available was one month therefrom. In the present case total period lapsed on 14.02.2020. The Hon'ble Supreme Court of India in *Prakash Corporates Vrs. Dee Vee Projects Ltd., (2022) 5 SCC 112 = (2022) 1 SCC (L&S) 771 = 2022 SCC OnLine SC 180* took cognizance of "unprecedentedly unfavourable and unpleasant" situation faced by entire humanity from or around the month of December 2019. The Appellate Authority, while passing order on 07.10.2021, had no occasion to take into consideration the orders of the Hon'ble Court more particularly *Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117 = (2022) 1 SCC (Cri) 580 = (2022) 2 SCC (Civ) 46 = (2022) 1 SCC (L&S) 501 = 2022 SCC OnLine SC 27* and *Prakash Corporates Vrs. Dee Vee Projects Ltd., (2022) 5 SCC 112 = (2022) 1 SCC (L&S) 771 = 2022 SCC OnLine SC 180*. This Court finds that the Appellate Authority has not taken note of relevant notification(s) and amendments carried thereto as discussed in the foregoing paragraphs.

8.11. Close reading of orders passed by the Hon'ble Supreme Court extending period of limitation, the Judgment rendered in the case

of *Tvl. Suguna Cutpiece Center Vrs. The Appellate Authority and Another, 2022 (61) GSTL 515 (Mad)* unflinchingly discussing the purport of amendment(s) to the provisions of the statute, the Judgment dated 09.12.2021 of Punjab & Haryana High Court in the case of *Aarcity Builders Private Limited Vrs. Union of India and Others, CWP No.19029 of 2021* and the notifications with the clarifications issued by the Central Government persuades this Court to conclude that there has been pious intention to facilitate the business to be carried out so as to enable smooth payment of taxes and not to debar the taxpayers, but to bring them back to GST fold. Therefore, this Court, being not oblivious of fundamental rights conferred on every citizen under Article 19(1)(g) *vis-à-vis* Article 14, is one with the view expressed in *Tvl. Suguna Cutpiece Center* and *Aarcity Builders Private Limited (supra)*. While subscribing to the observation and interpretation, this Court feels it apposite to quote the following from the judgment in *Tvl. Suguna Cutpiece Center (supra)*:

"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.

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221. While exercising jurisdiction, under Article 226 of the 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. Vrs. 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 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 professoin 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."

8.12. *Vide* Order dated 17.08.2022 Madras High Court in *M. Mallika Mahal Vrs. The Commissioner of Central GST & Central Excise, W.P. No.10663 of 2022, &c.* while ascertaining the position as to finality of Judgment in *Tvl Suguna Cutpiece Center (supra)* has observed as follows:

"7. All other petitioners have approached this Court direct, by way of writ petition, seeking the relief of restoration. A learned Single Judge of this Court in a batch of writ petitions in WP.Nos.25048 of 2021 and batch has, by way of an order dated 31.01.2022, considered the cases of identically placed petitioners as before me. In the cases of those petitioners as well, orders of revocation had been passed and some of the petitioners had approached the assessing authority in terms of Section 30 seeking revocation, some had appealed the orders of cancellation under Section 107 and others had merely approached this Court under Article 226 of the Constitution of India.

8. The learned Judge has considered interim events including the position that Amnesty Schemes had not been availed by those petitioners. In fine, the learned Judge accepts the case of the petitioners, imposing certain conditions in para 229 of the order. A specific query was put to the State Counsel as to whether order dated 31.01.2022 has attained finality. He brings to my notice a communication that has been addressed by the Additional Chief Secretary/Commissioner of Commissioner of Commercial Tax to the GST Council on 31.03.2022 seeking the view of the Council and its guidance/directions in regard to the order of this Court dated 31.01.2022."

8.13. An identical fact-situation arose before the Hon'ble Gujarat High Court, where the Appellate Authority did not entertain appeal on

the ground of limitation *qua* cancellation of registration being made on 10.07.2019. In the case of *Tahura Enterprise Vrs. Union of India, R/Special Civil Application No.3442 of 2022,* by a Judgment dated 30.03.2022, said Court observed thus:

> *"8. Indisputably, the cancellation of registration was on the ground of non-filing of returns by the writ-applicants. The impugned order cancelling the registration came to be passed on 10.07.2019. The writ-applicants preferred an application before the appellate authority for revocation of cancellation of registration, but such application was not entertained on the ground that the same was time barred.*
>
> *9. We take notice of the fact that the Central Board of Indirect Taxes and Customs extended the time limit for filing application for revocation of cancellation of registration and the limitation for all the orders passed on or before 12.06.2020 was to effectively commence from 31.08.2020. As the application filed by the writ applicants for revocation of cancellation of registration was looked into by a quasi-judicial authority, the order of the Supreme Court extending the period of limitation in view of the Covid-19 Pandemic would apply and in such circumstances, the limitation in accordance with the order passed by the Central Board of Indirect Taxes and Customs could be said to have been extended.*
>
> *10. Indisputably, the application requesting for restoration of registration was filed in July 2021 i.e. during the period when the order of the Supreme Court extending the limitation was in operation. More importantly, the writ-applicants have paid the requisite amount towards tax on the basis of self-assessed liability on 06.09.2021. Since the registration of certificate of the writ applicants came to be cancelled solely on the ground of non-filing of the returns, which was on account of non-payment of tax and the writ-applicants now having paid such outstanding tax, the registration certificate of the writ-applicants should be ordered to be restored so that they are able to continue with their business."*

8.14. Refusing to decide the challenge against order of cancellation of registration on the ground of limitation would be counter-productive approach as the taxable person is deprived to carry on business in the sense that no tax invoice can be raised. This would ultimately impact the recovery of taxes and thereby, the action of the authority would work against the interest of revenue. Therefore, the opposite parties are required to take a pragmatic view in the matter. The introduction of GST regime presupposes hassle-free and citizen friendly taxation process and the taxpayer is not to be treated as a person hostile to the Department. It is but obvious that if the taxpayer adopts clandestine business and adopts dubious device to evade payment of tax, then he has to be dealt with sternly.

8.15. In such view of the matter, the writ petition is liable to be allowed with certain directions.

9. It is pertinent to say that writ petition is maintainable challenging the order in appeal, *albeit* the petitioner is entitled to carry the matter before the Appellate Tribunal under Section 112 of the CGST Act inasmuch as even after lapse of 5 years, the said Appellate Tribunal is not constituted under Section 109.

9.1. Pertinent here to refer to the ratio of Judgment laid down by the Hon'ble Supreme Court in the case of *Mohamed Ali Vrs. V. Jaya & Others, 2022 SCC OnLine SC 817*, in the context of maintainability of writ petition *qua* condonation of delay in preferring civil revision under Section 115 the Code of Civil Procedure, 1908 *vis-a-vis* availability of alternative remedy. The said Hon'ble Court has been pleased to lay down as follows:

20. Even otherwise and as observed hereinabove, against the ex-parte judgment and decree, the remedy by way of an appeal before the First Appellate Court was available. Therefore, the High Court ought not to have entertained the revision application under Section 115 of CPC and under Article 227 of the Constitution of India. The High Court ought not to have entertained such a revision application challenging the ex-parte judgment and decree. Once there was a statutory alternative remedy by way of an appeal available to the defendants, the High Court ought not to have entertained a writ petition or revision application under Article 227 of the Constitution of India.

21. At this stage, the decision of this Court in the case of Virudhunagar Hindu Nadargal Dharma Paribalana Sabai Vrs. Tuticorin Educational Society, (2019) 9 SCC 538, is required to be referred to. In the said decision, it is observed and held by this Court that wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under CPC, will deter the High Court and therefore, the High Court shall not entertain the revision under Article 227 of the Constitution of India especially in a case where a specific remedy of appeal is provided under the CPC itself. While holding so, it is observed and held in paragraphs 11 to 13 as under:—

> *"11. Secondly, the High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Civil Procedure Code, 1908, was directly available, Respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In A. Venkatasubbiah Naidu Vrs. S. Chellappan, (2000) 7 SCC 695, this Court held that "though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well-recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy".*

> 12. ***But courts should always bear in mind a distinction between*** *(i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and* ***(ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals****. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which Respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in Surya Dev Rai Vrs. Ram Chander Rai, (2003) 6 SCC 675, pointed out in Radhey Shyam Vrs. Chhabi Nath, (2015) 5 SCC 423 = (2015) 3 SCC (Civ) 67 that* ***"orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts"****.*
>
> 13. *Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."*

22. *Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the High Court ought not to have entertained the revision petition under Article 227 of the Constitution of India against the ex-parte judgment and decree passed by the learned Trial Court in*

view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. Therefore, the High Court has committed a grave error in entertaining the revision petition under Article 227 challenging the ex-parte judgment and decree passed by the learned Trial Court and in quashing and setting aside the same in exercise of powers under Article 227 of the Constitution of India."

[Emphasis supplied]

9.2. In the case of *Vinod Kumar Vrs. Commissioner of Uttarakhand State GST and Others, Special Appeal No. 123 of 2022, vide Judgment dated 20th June, 2022* the set of facts available before the Hon'ble Uttarakhand High Court was that on account of failure to file returns for a continuous period of six months, which was mandatory under the Uttarakhand GST Act, the registration got cancelled on 21.09.2019 and the appeal before the First Appellate Authority was dismissed on the ground of delay; however, the writ petition filed by petitioner/appellant was also dismissed as not maintainable. In the Appeal against Order in Writ Petition passed by the Single Judge of said High Court while holding that writ petition was maintainable, the Court observed the following:

"4) Thus it is apparent that the Statute does not provide any prohibition against exercise of the writ jurisdiction under Article 226 of the Constitution by the High Court. The practice of not entertaining the writ petition, except in the cases accepted above by the Hon'ble High Court, in a case where an alternative and efficacious remedy is available, is an internal mechanism, which the Court has imposed upon themselves.

5) Moreover, this issue whether a writ petition is maintainable when the limitation provided for filing an appeal is not extendable, as in this case, was considered by the Full

Bench of the Gujarat High Court in the case of Panoli Intermediate (India) Pvt. Ltd. Vs Union of India and others, 2015 SCC OnLine Guj 570 = AIR 2015 Guj 97 = (2015) 56 (2) GLR 1395 (FB) = (2015) 3 KLT (SN 40) 30 (F.B.) = (2015) 326 ELT 532 = (2016) 2 GLH 337 (FB), where the case was referred to the larger Bench for determining three questions. The third question is important for this case, which is quoted below:

(3) When if the statutory remedy of appeal under Section 35 is barred by the law of limitation whether in a Writ Petition under Article 226 of the Constitution of India, the order passed by the original adjudicating authority could be challenged on merit?

6) The answer was given by the Hon'ble Full Bench of the Gujarat High Court in paragraph 31 of the said judgment, especially, in sub-paragraph (3). The Full Bench of the Hon'ble Gujarat High Court held that on the third question the answer is in affirmative, but with the clarification that

A) The petition under Article 226 of the Constitution can be preferred for challenging the order passed by the original adjudicating authority in following circumstances that:

A.1) The authority has passed the order without jurisdiction and by assuming jurisdiction which there exist none

A.2) Has acted in flagrant disregard to law or rules or procedure or acted in violation of principles of natural justice where no procedure is specified.

B) Resultantly, there is failure of justice or it has resulted into gross injustice. We may also sum up by saying that the power is there even in aforesaid circumstances, but the exercise is discretionary which will be governed solely by the dictates of the judicial conscience enriched by judicial experience and practical wisdom of the judge.

7) It is apparent from the record that a notice was given on the website, which in our considered opinion, is not sufficient, and a personal notice has to be given before cancellation of the registration. Therefore, the Court can invoke its jurisdiction under Article 226 of the Constitution and hold that the orders passed by the learned Commissioner can be interfered in a writ jurisdiction."

9.3. The present writ petition is, therefore, entertained on the peculiar facts of the case and circumstances that prevailed at the relevant period.

9.4. As already stated, since the Appellate Tribunal has not yet been constituted as per Section 109 of the CGST Act, there being no alternative remedy available for the petitioner to question the veracity of the order passed in the first appeal, this Court prefers to exercise its writ jurisdiction to undo prejudice and injustice caused to the petitioner. Thus, this Court is of the considered view that grave injustice would ensue if extraordinary jurisdiction under Article 226 of the Constitution of India is not exercised. In the present case scales of justice weigh in favour of the petitioner.

9.5. In the event GST registration number is not restored, the petitioner would not be in a position to raise a bill as e-invoice system has been put in place in the GST regime. So, if the petitioner is denied of revival of GST registration number, it would affect his right to livelihood (Article 21 of the Constitution of India) as also right to carry on business [Article 19(1)(g)]. If he is denied of his right to livelihood because of the fact that his GST Registration has been cancelled, and that he has no remedy of appeal especially when Appellate Tribunal has not been constituted in terms of Section 109 read with Section 112, then it would tantamount to violation

of provision enshrined under Article 21 of the Constitution of India as the right to livelihood springs from the right to life avowed under Article 21.

10. This Court, in the case of one of the parties, namely in the case of *Suntony Signage Pvt. Ltd.,* whose registration under the CGST Act being cancelled and appeal being rejected on the ground of limitation by way of common order dated 07.10.2021, which order is subject-matter of challenge in the present writ, allowed the writ petition being W.P(C). No.41856 of 2021 [*Suntony Signage Pvt. Ltd. Vrs. Principal Commissioner of Central Goods and Services Tax & Others*] *vide* Order dated 12.07.2022 by setting aside said Appellate Order. In certain other cases, one of them being *Nirmani Engineers and Constructions Pvt. Ltd. Vrs. The Commissioner of CT&GST, Odisha and Others, W.P.(C) No.15934 of 2021, vide* Order dated 05.05.2021 condoning the delay in invoking proviso to Rule 23 of the Odisha Goods and Services Tax Rules, 2017, this Court allowed the petitioner therein to deposit tax, interest, penalty with late fee and furnish returns for the defaulted period.

11. Apart from the above, it may be worthwhile to say that the Appellate Authority should have borne in mind the predicament faced by taxpayers on the introduction of new set of procedures by way of promulgation of the CGST Act and the OGST Act and rules framed thereunder and time required to be taken to get acquainted. It is pertinent to refer to the following excerpts from Judgment dated 24.02.2022 delivered by the Hon'ble Gujarat High Court in the case of *Aggarwal Dyeing and Printing Works*

Vrs. State of Gujarat & 2 Other(s), R/Special Civil Application No. 18860 of 2021:

> *"15.1 The Appellate authority ought to have appreciated that the writ applicants at relevant point of time i.e. in year 2017, applied for registration which request was favourably considered by the authorities under the Act with a specific registration number allotted to the writ applicant. It was a transitional phase, whereby the old CST Act was repealed and the new regime of CGST/ GGST has come into force. With the different forms and procedure envisaged thereunder, any layman is bound to take time to adhered to the norms. The Record reveals that subsequently the writ applicants have claimed to have filed their returns and have even deposited all dues. We further notice that such exercise has been undertaken through the writ applicant's Tax Consultant who were professionally engaged to undertake such task. Unfortunately, information of the returns for certain period not being uploaded, surfaced in the year 2019 and the cause explained suggest that circumstances were beyond the writ applicant's reach. In such peculiar circumstances, it was least expected of the Appellate Authority to condone the delay for filing appeal, more so, with the onset of Pandemic Covid-19, preventing further follow up action. In the peculiar facts and circumstances, the authority ought to have condoned the delay which unfortunately was not done, despite the writ applicant having made a fervent request for condonation of delay in filing appeal seeking revocation of cancellation of registration."*

12. On the aforesaid analysis of factual and legal position, it is apt to set aside the Appellate Order dated 07.10.2021. As a consequence, this Court in the aforesaid circumstances thought of remitting the matter to the Appellate Authority for consideration of merits afresh. Nevertheless, this matter relates to registration of the petitioner which has been cancelled since 15.10.2019 and involves right to carry on business and sending the matter back to the

Appellate Authority would further delay the process. It is taken into consideration that as the consequential effective step is required to be taken by the proper officer/Registering Authority/Superintendent, it is, therefore, deemed necessary instead of directing the Appellate Authority to do the needful, this Court requests the proper officer to grant opportunity to the petitioner for taking all required step to revive registration. Thus, writ of *mandamus* is liable to be issued keeping in mind the notifications and the suggestions put forth by Mr. Rudra Prasad Kar, learned Advocate. So does this Court in the present case to ensure ends of justice in the light of directions envisaged in *Tvl. Suguna Cutpiece Center Vrs. The Appellate Authority and Another, 2022 (61) GSTL 515 (Mad)* by the Madras High Court and Order dated 05.05.2021 of this Court in *Nirmani Engineers and Constructions Pvt. Ltd. Vrs. The Commissioner of CT&GST, Odisha and Others, W.P.(C) No.15934 of 2021.*

13. In the above premise, the following directions are, therefore, issued:

i. The petitioner is permitted to file returns for the period prior to the cancellation of registration, if such returns have not already been filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and statutory payments and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of sixty days (60) days from the date of receipt of a copy of this Judgment, if it has not been already paid.

ii. It is made clear that such payment of tax/interest/penalty/ fine/fee *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 the petitioner.

iii. On payment of tax, interest, penalty and late fee, if any, and uploading of returns, as conceded by both the parties, the petitioner is at liberty to file the application for revocation of cancellation of registration within a period of 7 days therefrom along with petition for condonation of delay. In such eventuality, the proper officer/registering authority/ competent authority shall consider the same favourably by condoning the delay and revoke the cancellation of registration.

iv. The opposite parties shall take suitable steps by instructing GST Network, New Delhi or any other agency responsible for maintaining the Web Portal to make suitable changes in the architecture of the GST Web Portal to enable the petitioner to file his returns and to pay the tax/interest/penalty/fine/fee and it is to be ensured by the department that there shall be no technical glitch during the period specified herein.

v. The above exercise shall be completed by the opposite parties within a period of ninety (90) days from the date of receipt of a copy of this Judgment.

vi. The Authority concerned is at liberty to verify the veracity of the claim(s) made in the returns so furnished and take

appropriate steps in accordance with law after affording reasonable opportunity of hearing to the petitioner.

14. The writ petition is allowed in the above terms. Parties are to bear their respective costs. Since the main case has been decided, the pending Interlocutory Application, if any, also stands disposed off.

(JASWANT SINGH)
JUDGE

(M.S. RAMAN)
JUDGE