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W.P.No.487 of 2023

W.P.No.487 of 2023
& W.M.P.Nos.437 of 2023
in W.P.No.487 of 2023

M.SUNDAR.J.,

In the captioned main writ petition an 'order dated 04.01.2022 bearing reference No.ZA330122007845Z' [hereinafter 'impugned order' for the sake of brevity and convenience] made by sole respondent has been called in question.

2. Mr.G.Natarajan, learned counsel for writ petitioner submits that in and by the impugned order, the writ petitioner's 'Goods and Services Tax registration' [hereinafter 'GST registration' for convenience] has been cancelled for failure of writ petitioner to furnish returns.

3. Learned counsel submits that as against the impugned order, the writ petitioner-dealer/registrant qua GST registration has atleast three remedies under 'Goods and Services Tax Act, 2017' [hereinafter 'GST Act' for the sake of convenience and clarity] and Rules thereunder being 'Goods and Services Tax Rules, 2017' [hereinafter 'said Rules' for the sake of brevity and convenience]. To be noted, said Rules is subordinate legislation made by Government under Section 164 of GST Act read with Section 166 of GST Act.



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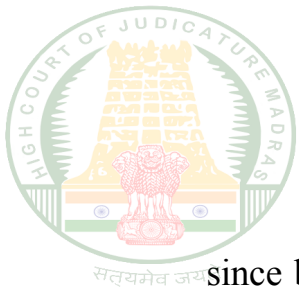
4. Reverting to GST Act and Rules thereunder, learned counsel submits that the three remedies are a) statutory appeal under Section 107 of GST Act, b) Application for revocation of impugned order under Section 30 of GST Act read with Rule 23 of GST Rules and c) an application for registration afresh under Section 22 of GST Act.

5. To be noted, the above may not really be exhaustive but is good enough for considering the case on hand.

6. Learned counsel submits that the impugned order is dated 04.01.2022, it was served on the writ petitioner on the same day (uploaded in the portal) and therefore, three months prescribed period and one month condonable period qua Section 107 appeal has since elapsed.

7. As regards application afresh under Section 22, learned counsel submits that he is a Government Contractor and change in the Registration Number can cause difficulties, which are insurmountable for the writ petitioner.

8. As regards application for revocation of cancellation of registration, learned counsel submits that returns have since been furnished, tax, interest, penalty and late fee payable on the same have also



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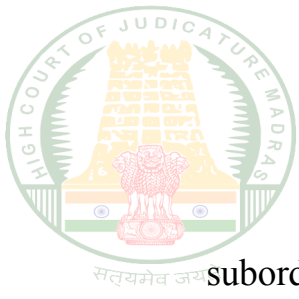
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since been paid and the relevant date is 13.10.2022. Adverting to proviso to sub-rule (1) of Rule 23, learned counsel submits that 30 days for revocation should be construed from 13.10.2022. Learned counsel submits that he could not seek revocation within 30 days from 13.10.2022 as the portal does not permit him to do that.

9. Mr.Pramodkumar Chopda, learned Senior Standing counsel (CBIT) accepted notice on behalf of lone respondent.

10. Learned Revenue counsel adverting to the aforementioned proviso to sub-rule (1) of Rule 23 submits that the proviso does not explain the 30 days period but it is couched in a negative language and it only carves out an exception to the main provision to say that in cases of cancellation for failure to furnish returns, revocation within 30 days will not be permissible without a) filing of returns, b) payment of tax, c) payment of interest, d) payment of penalty and e) payment of late fee. In other words, learned Revenue counsel submits that all these should be done within 30 days.

11. Attention of this Court was drawn to Section 30 of GST Act, which is the parent Act qua said Rules which is subordinate legislation. Section 30 itself speaks about limitation and therefore, whether a



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subordinate legislation can extend the limitation in the parent legislation arises for consideration. In this regard, Section 166 of parent Act becomes relevant as that provides for laying of all subordinate legislation made under Section 164 before both houses of Parliament. Such subordinate legislation which are placed before both houses of Parliament are placed in a different footing qua in a different basket qua other subordinate legislations, which do not have such a statutory requirement i.e., statutory requirement placed before both houses of Parliament.

12. This Court is also informed by both sides that aforementioned proposition has not subjected to legal debate as yet and therefore is not blessed with precedents.

13. Both sides request for a short accommodation to make further submissions on the above lines. Request acceded to.

14. Registry to show the name of Revenue counsel in the next listing.

15. As the matter involves Revenue qua the State Government also, Mr.C.Harsha Raj, learned Additional Government Pleader (Tax) was given audience who highlighted Section 30 of parent legislation point alluded to supra. Learned counsel is permitted to assist the Court in the



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next listing along with Mr.Pramodkumar Chopda for greater clarity.

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List in the Admission Board a fortnight hence. List on

23.01.2023.

09.01.2023

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09.01.2023

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