

JHARKHAND HIGH COURT

W.P (T) No. 222 of 2023

Creative Industrial Security Force Pvt. Ltd-Appellant

Versus

Union of India-Respondent

Coram: Hon'ble Mr. Justice Aparesh Kumar Singh Hon'ble Mr. Justice Deepak Roshan

Date of order: 03/04/2023

Decision-Case Disposed off

Issue Involved-Cancellation of GST registration-revocation appeal has been rejected on the ground that the petitioner has not filed the said appeal before the Appellate Authority within the time limit as prescribed under the [Section 107\(1\) & 107 \(4\)](#) of the CGST Act, 2017.

Findings-Notification appears to be beneficial in nature as it provides a window of opportunity to all such registered persons whose registration were cancelled for non-compliance of the provisions of [Section 29\(2\)](#) (b) and (c) of CGST Act, 2017. Such registered persons may apply for revocation of cancellation of registration up to 30th June 2023, subject to filing of returns due upto the effective date of cancellation of registration and payment of any amount due as tax along with interest, penalty and late fee in respect of such returns. It is also made clear that no further extension of time period for filing application for revocation of cancellation of registration shall be available in such cases. The Explanation to the notification also indicates that the notification shall cover not only those persons who failed to apply for revocation of cancellation of registration within the time specified in Section 30 of the Act, but also those whose appeal against the order of cancellation of registration under Section 107 of the Act stood rejected or they failed to adhere to the time limit specified under sub-section (1) of Section 30 of the said Act to approach the Appellate Authority against the order rejecting application for revocation of cancellation of registration under section 107 of the Act.

The petitioner falls in the category of cases where the appeal preferred against the cancellation of GST registration has been rejected under Section 107(1) and (4) of CGST Act as time barred. However, since the provision is beneficial in nature and

appears to ameliorate the difficulty faced by such registered persons whose GST registration stood cancelled, the writ petition is disposed of with a direction to the petitioner to approach the proper officer with an application for revocation of cancellation of registration by 30th June 2023, as per the Notification dated 31.03.2023 after complying with the conditions prescribed thereunder.

The impugned order of cancellation of registration and affirmed by order in appeal, shall not come into the way of the proper officer to consider the prayer for revocation of cancellation of registration in terms of the Notification No. 03/2023. Writ petition is accordingly disposed of.

Appearance:

M/s Deepak Kr. Sinha, Piyush Poddar, Rakhi Sharma, Advocates for the petitioner.

M/s Amit Kumar, Ashish Shekhar, Advocates for the respondent.

JUDGMENT

Heard learned counsel for the parties.

2. Though, counter affidavit has not been filed despite time granted to the Respondent CGST, but learned counsel for the petitioner prays that writ petition can be disposed of in the light of the Notification No. 03/2023-Central Tax, G.S.R. 246(E) issued vide Gazette Notification dated 31.03.2023 by the C.B.I.C, Department of Revenue, Ministry of Finance, Government of India.

3. Writ petition was preferred with the following prayer.

(A) For quashing and setting aside the Order-in-Appeal No. 02/CGST/RAN/2023 dated 03.01.2023 (Annexure-7) passed by the Appellate Authority i.e. Additional Commissioner (Appeals), Central Goods & Service Tax, Ranchi whereby the appeal filed by the petitioner against the Order-in-Original dated 24.02.2022 (Annexure-2), has been rejected mainly on the ground that the petitioner has not filed the said appeal before the Appellate Authority, for revocation of cancelled of GST registration within the time limit as prescribed under the [Section 107\(1\) & 107\(4\)](#) of the Central Goods & Service Tax Act, 2017 read with rule 109 A(1) of the Central Goods and Service Tax Rules, 2017, despite the fact that the petitioner had submitted all returns in GSTR-3B for the period for the FY 2021-22 (Annexure-4) and had also deposited the entire amount of GST till the period September 2022 made through various challans (Annexure-3)

(B) For quashing and setting aside the Order-in-Original dated 24.02.2022 (Annexure-2) passed by the Respondent No. 2 in Form GST REG-19, whereby and whereunder the GST Registration of the petitioner has been cancelled w.e.f. 24.02.2022, on the ground that “the taxpayer neither appeared for physical hearing nor filed the due returns, hence, the registration is liable to be cancelled”.

(C) For quashing and setting aside the purported show cause notice dated 02.12.2021 (Annexure-1) issued by the Respondent No. 2 in Form GST REG-31,

whereby and whereunder the petitioner has been show caused as to why the GST Registration of the petitioner should not be cancelled, on the ground of “failure to furnish returns for a continuous period of six months”.

(D) For a direction upon the Respondents to immediately restore the GST Registration of the petitioner, which is revoked vide order of cancellation of registration dated 24.02.2022 (Annexure-2), as due to cancellation of GST registration, the bills of the petitioner is stuck with its employers and till the GST Registration is not revived, the payments shall be withheld by the employers of the petitioner and further the petitioner has already discharged its GST liabilities under CGST and SGST till the period September 2022, but unable to file its GST returns.

In substance, petitioner seeks quashing of the impugned Order-in- Original and Order-in-Appeal, whereby the cancellation of GST registration stands affirmed.

4. Learned counsel for the petitioner submits that by virtue of the aforesaid Notification No. 03/2023, the registered person whose registration has been cancelled under Clause (b) or Clause (c) of sub-section (2) of [Section 29](#) of the CGST Act on or before the 31st December 2022, may apply for revocation of cancellation of such registration upto 30th June 2023 even if they failed to apply for revocation of cancellation of such registration within the time prescribed in Section 30 of the said Act. However, the registered person shall have to furnish their returns due upto the effective date of cancellation of registration and make payment of any amount due as tax in terms of such returns, along with any amount payable towards interest, penalty and late fee in respect of such returns. It is submitted that explanation thereto further clarifies that person who failed to apply for revocation of cancellation of registration within the time specified in [Section 30](#) of the said Act, would include a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act, has been rejected on the ground of failure to adhere to the time limit specified under sub-section (1) of Section 30 of the said Act. It is submitted that the petitioner is ready and willing to avail of this window of opportunity as the petitioner’s business has come to standstill due to cancellation of registration. Therefore, writ petition may be disposed of with a direction upon the petitioner to invoke the beneficial provisions of Notification issued under section 148 of CGST Act, 2017 bearing No. 3/2023 intended to ameliorate the difficulties being faced by a class of registered persons who for one or the other reason could not file their returns within the time leading to cancellation of GST registration, as a result of which, their business has come to standstill. Therefore, petitioner may be allowed to approach the competent authority / proper officer for revocation of cancellation of registration within the time limit prescribed i.e. 30th June 2023 after following the laid down conditions. It is submitted that the instant notification also covers the case of those whose appeal have been rejected.

5. Learned counsel for the Respondent CGST submits that though counter affidavit could not be filed as instructions are awaited, but in view of the Notification No. 3/2023 dated 31.03.2023 issued by the C.B.I.C, petitioner may avail the opportunity to seek revocation of cancellation of registration by following the prescribed conditions. Learned counsel for the CGST submits that the appeal has been rejected as time barred under [section 107](#)(1) and (4) of the CGST Act.

6. Learned counsel for the petitioner submits that in order to avail of the remedy provided under the instant notification, the impugned order of cancellation of registration, as affirmed in appeal, may have to be set aside.

7. We have considered the submissions of learned counsel for the parties. The petitioner approached this court against the affirmation of the order of cancellation of registration by the Appellate Authority. The petitioner had failed to comply with the provisions of Section 29 (2) (b) (c) of the CGST Act. However, it appears that C.B.I.C on the recommendation of GST Council in its 49th Meeting dated 18.02.2023, has issued the Notification No. 3/2023-Central Tax dated 31.03.2023 in the Extra Ordinary Gazette, which reads as under:

“G.S.R. 246 (E).- In exercise of the powers conferred by [section 148](#) of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies that the registered person, whose registration has been cancelled under clause (b) or (c) of sub-section (2) of section 29 of the said Act on or before the 31st day of December, 2022, and who has failed to apply for revocation of cancellation of such registration within the time period specified in section 30 of the said Act as the class of registered persons who shall follow the following special procedure in respect of revocation of cancellation of such registration, namely:-

(a) the registered person may apply for revocation of cancellation of such registration upto the 30th day of June 2023;

(b) the application for revocation shall be filed only after furnishing the returns due upto the effective date of cancellation of registration and after payment of any amount due as tax, in terms of such returns, along with any amount payable towards interest, penalty and late fee in respect of such returns;

(c) no further extension of time period for filing application for revocation of cancellation of registration shall be available in such cases.

Explanation:- For the purposes of this notification, the person who has failed to apply for revocation of cancellation of registration within the time period specified in section 30 of the said Act includes a person whose appeal against the order of cancellation of registration or the order rejecting application for revocation of cancellation of registration under section 107 of the said Act has been rejected on the ground of failure to adhere to the time limit specified under sub-section (1) of section 30 of the said Act.”

8. Apparently, notification appears to be beneficial in nature as it provides a window of opportunity to all such registered persons whose registration were cancelled for non-compliance of the provisions of Section 29(2) (b) and (c) of CGST Act, 2017. Such registered persons may apply for revocation of cancellation of registration up to 30th June 2023, subject to filing of returns due upto the effective date of cancellation of registration and payment of any amount due as tax along with interest, penalty and late fee in respect of such returns. It is also made clear that no further extension of time period for filing application for revocation of cancellation of registration shall be available in such cases. The Explanation to the notification also indicates that the notification shall cover not only those persons who failed to apply for revocation of cancellation of registration within the time specified in Section 30 of the Act, but also those whose appeal against the order of cancellation of registration under Section 107 of the Act stood rejected or they failed to adhere to the time limit specified under sub-section (1) of Section 30 of the said Act to approach the Appellate Authority against the order rejecting application for revocation of cancellation of registration under section 107 of the Act.

9. The petitioner falls in the category of cases where the appeal preferred against the cancellation of GST registration has been rejected under Section 107(1) and (4) of CGST Act as time barred. However, since the provision is beneficial in nature and appears to ameliorate the difficulty faced by such registered persons whose GST registration stood cancelled, the writ petition is disposed of with a direction to the petitioner to approach the proper officer with an application for revocation of cancellation of registration by 30th June 2023, as per the Notification dated 31.03.2023 after complying with the conditions prescribed thereunder.

Needless to say, if the petitioner makes such an application, the impugned order of cancellation of registration and affirmed by order in appeal, shall not come into the way of the proper officer to consider the prayer for revocation of cancellation of registration in terms of the Notification No. 03/2023. Writ petition is accordingly disposed of.