

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

WRIT PETITION (M/S) NO.1553 of 2021

Vinod Kumar

.....Petitioner

Vs.

Commissioner Uttarakhand State GST Commissionerate, Dehradun & others

.....Respondents

Mr. S.K. Posti, Senior Advocate, assisted by Mr. Ashutosh Posti, Advocate, for the petitioner.

Mr. Ajay Singh Bisht, Additional CSC, with Mr. Suyash Pant, Standing Counsel, for the State of Uttarakhand.

**Hon'ble Sharad Kumar Sharma, J (Oral)**

A very intricate question, which has been raised by the learned Senior Counsel for the petitioner, in the present writ petition is emanating from the impugned orders, which have been passed by the Competent Authorities under the Uttarakhand Goods and Service Tax, Act of 2017, whereby by an order of 21.09.2019, which has been passed by the Assistant Commissioner, GST, he had cancelled the registration of the petitioner, which was bearing GST Registration No.GSTIN 05AGMPK8182B3ZC”, which was alleged to have been registered, in his name as back as on 03.07.2017. The reason, which has been assigned in the order of cancellation of the registration, was that since the petitioner was an assessed tax payer, and as he has failed to file his continuous returns for a period of over six months which was otherwise mandatory under the Act, and hence his registration was cancelled. The petitioner has contended, that the aforesaid cancellation of the registration of the petitioner vide the order of Assistant Commissioner, on 21.09.2019, was without providing any opportunity of hearing to the petitioner, and hence it would be bad in the eyes of law.

2. Be that as it may, factually the learned Senior Counsel for the petitioner has submitted, that the petitioner is a proprietorship

firm, which is presently engaged in performing the work of painting and conducting repairing work, and since being a service provider, under the Uttarakhand Goods and Service Tax, Act, which was required to be registered and which admittedly itself had got registered on 03.07.2017. The petitioner submits that on account of the financial loss it had suffered a financial crisis, in the year 2019-2020, and hence he was not able to pay the tax returns for the period, which had constituted, as to be the basis and the reasoning for cancellation of his registration by the impugned order dated 21.09.2019. He further submits, that though the Assistant Commissioner on 09.09.2019, had issued the show-cause notice prior to taking an action of cancellation of registration of the petitioner.

3. At this stage, this Court feels it to be necessary to point out, that the shelter, which has been taken by the petitioner for the purpose of enlarging the period of limitation it was based on the pretext of the judgment of the Hon'ble Apex Court which was rendered in **Writ Petition (Civil) No.03 of 2020**, where the relaxation from the period of limitation has been provided for the period from 15.03.2020 to 14.03.2021, one of the issues for consideration would be as to whether at all the said relaxation could be made applicable under the facts and circumstances, of the instant case, where the petitioner, was already noticed much prior in time i.e. on 09.09.2019, though the exception, which has been carved out by the counsel in the argument and the pleadings, is by shouldering and shifting the responsibility on the Advocate, who was appointed on behalf of the petitioner to file his returns, and reply to the notice issued dated 09.09.2019, which was not done so by the petitioner or his counsel thus engaged, within the prescribed period, and further on account of the glitch in the GST Portal, his registration was cancelled on 21.09.2019. In fact, yet again, at this stage itself, this Court feels to be necessary to point out that this order of cancellation of registration dated 21.09.2019, and the limitation provided, therein, under the Act, for preferring of an appeal had expired, even much prior to the judgment of the Hon'ble Apex Court, by virtue of which the extension of limitation was provided in general. Learned Senior Counsel, for the

petitioner has contended, that the cancellation order itself was not communicated to the petitioner by his Advocate, and thus in view of the lack of information being imparted to him, the petitioner firm remained ignorant of the order of the cancellation, which was rendered by the respondent No.2, on 21.09.2019.

4. It is an admitted case of the petitioner, that the knowledge of the order of 21.09.2019 cancelling the GST registration, was parted to him after the lapse of about 477 days, when he had approached the counsel i.e. his GST consultant, to know about the status of the registration, and hence he submits that the cancellation order, which was made, while exercising the powers under Section 29 (2) (C) of the GST Act, ought not to have been passed in the manner in which it has been done, and in that context, he makes a reference to Section 29 (2) (c), of the Act, which is extracted hereunder:-

29. (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)....

(b)....

(c) Any registered person, other than the person specified in clause b, has not furnished returns for a continuous period of six months or.

5. The provisions of Section 29 (2) (c), which empowers the Competent Authority, (registering authority), to cancel the registration is a self contained provision, where the power of cancellation, could be exercised by the Assessing Authority for cancellation of the registration, subject to satisfying the condition of non fulfillment of the conditions, which otherwise an assessee was required to adhere to, for the purposes of submissions of the returns for the period, as it has been detailed therein under Section 29 (2) (c) of the Act. Its not only that, this Court cannot be oblivious of the fact, that even prior to providing the recourse of an appeal under Section 107 of the Act, the legislature under the Act, had itself provided an inbuilt mechanism, which was available to the Assessee, while the petitioner could have invoked Section 30 (1) of the Act, for the purposes of revocation of an order of cancellation of the registration, provided it satisfies the

condition provided under Section 30 of the Act. Though, it may not be relevant, to make a reference to Section 30 of the Act, at this stage, for the reason being, that it is an admitted case of the petitioner, that no such application for revocation of the cancellation of the registration, was ever filed by the petitioner within the time provided under law, the reason being, on the pretext, that the knowledge of the order of cancellation was not given to him, so there was no occasion for the petitioner to have filed an application for revocation. Ultimately, the petitioner preferred an appeal as provided under Section 107 of the Chapter 18 of the Act. The appellate provision is extracted hereunder:-

**“107 (1) Any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed **within three months from the date on which the said decision or order is communicated to such person.****

(2) The Commissioner may, on his own motion, or upon request from the commissioner of central tax, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act or the Central Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under subsection (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

**(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.**

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid –

(a) In full, such part of the amount of tax, interest, fine, fee and penalty arising out from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

6. On the scrutiny of sub-section (1) of Section 107 of the Act, the specific period of limitation, as prescribed therein, for the purposes of preferring of an appeal, against the order of cancellation of the registration, is that of three months, from the date of the decision itself or order is communicated to such petitioner. Under sub-section (4) of Section 107 of the Act (as extracted above), the period of limitation as prescribed, therein, of preferring of an appeal under Section 107 of the Act, could be extended, for a further period of thirty days by the Appellate Authority itself, but since in the present case the appeal was preferred even much beyond the period of limitation even provided under Section 107 (4) of the Act, **which has expired on 19.01.2020**. The reference of this date of 19.01.2020, becomes relevant, because this expiry of period of limitation, was even much prior to the issuance of the notification issued by the Government of India, imposing the restrictions of lockdown due to Covid 19 pandemic, and hence the shelter being taken in pursuance to the orders of the Hon'ble Apex Court, since was made applicable even after the expiry of the period of limitation provided under Section 107 (4) of the Act, the principles from the Hon'ble Apex Court judgment would not be attracted in the instant case.

7. Admittedly, in the instant case the petitioner has **preferred an appeal on 10.04.2021**, as against the impugned order of 21.09.2019, the petitioner submitted, that all the pending returns, along with the tax, interest and late fee, till the date of the cancellation of registration stood paid, but since the remittance of any of the dues, as detailed above could only be established before the assessing

authority or even before an appellate jurisdiction, also only by way of the documents on record, and not by way of the personal knowledge, the manner in which the paragraph No.16, of the writ petition has been pleaded by the petitioner, no reliance could be placed on the said, at this stage of the writ petition.

8. The petitioner further submits, in paragraph No.17, of the writ petition, that he undertakes to pay the penalty, after the restrictions of the GST Registration is lifted. This contention raised in paragraph No.17, of the writ petition of undertaking for meeting the liability, to pay the tax returns, which he has defaulted, to be remitted in the light of the provisions contained under Section 29 (2) (c) of the Act, runs contradictory to his own pleadings which had been raised in paragraph no.16, of the writ petition, where the petitioner has submitted, that the appeal which was, thus, preferred by him under Section 107 of the Act, was barred by 52 days only, and it ought not to have been rejected, under the pretext of the extended period of limitation which had been provided by the Hon'ble Apex Court for the period from 15.03.2020 to 14.03.2021. However, the petitioner's appeal was rejected on the ground of limitation by one of the impugned order under challenge i.e. order dated 26.06.2021, whereby after its rejection the "Form GST APL-01", was issued.

9. The petitioner's has tried to submit, that the aforesaid extension of limitation, as it was provided by the Hon'ble Apex Court, has been made applicable before the Taxing Appellate Forums too, in view of the circular which was later issued on 27.07.2021, by the Central Board of Direct Taxes and Customs, in fact this circular too, would not be of any benefit to the petitioner, for the reason being, that the adoption of the principle for the extension of the limitation period based on the Hon'ble Apex Court judgment, which was adopted by the Board, it was only on 27.07.2021, i.e. much after preference of an appeal by the petitioner on 10.04.2021. Thus, the knowledge, which the petitioner attributes, that he could not obtain the knowledge, for a period of 477 days, in fact smacks a sense of irresponsibility for an assessee, who is facing an order of cancellation of its registration rendered on 21.09.2019, and particularly when the assessee i.e. the petitioner was, attributing its responsibility on the Advocate, without

there being any pleading to the said effect, that in case he was misguided or misled by the Counsel; as to what action he has taken against the Counsel, who had misinformed him or had not informed him about the order of the cancellation of his registration on 21.09.2019. Hence, the plea of inability to prefer an appeal within the specified period of limitation being on account of the Covid – 19 pandemic, is not sustainable, and is not accepted by this Court, as period of preferring an appeal, expired much prior to declaration of Lockdown by the Government of India.

10. In order to challenge the two orders, the petitioner's Senior Counsel, has submitted that even if the appeal has been dismissed on the ground of limitation, because of the provisions under sub-section (4) of Section 107 of the Act, the period of limitation could not have been extended beyond the period of one month; still the principal order of cancellation of GST Registration could still be scrutinized by the High Courts', while exercising its power under Article 226 of the Constitution of India. The learned Senior Counsel for the petitioner had made a reference and relied upon a full bench judgment of the Gujarat High Court, which has been reported in **2015 AIR (Gujarat) 97, "Panoli Intermediate (India) Pvt. Ltd Vs. Union of India"** as rendered in **Special Civil Application No.18542 of 2014, and the Special Civil Application No.13530 of 2014, "Panoli Intermediate (India) Pvt. Ltd Vs. Union of India"**.

11. The learned Senior Counsel for the petitioner had submitted, that despite of the appeal having been dismissed on the ground of limitation, still the High Court can venture into the principal order of cancellation of the GST registration of the petitioner, it is contended that its a principle which has been laid down by the full bench of the Hon'ble Gujarat High Court, and the said principles can also be attracted, to be made applicable by the writ courts, in the present case, in scrutinizing the principal order of cancellation of the registration dated 19.09.2019.

12. This Court is not in agreement with the arguments as it has been extended by the learned Senior Counsel for the petitioner; for the reason being that if the principal ratio which had been laid

down by the full bench judgment of the Hon'ble Gujarat High Court, is taken into consideration, it has rather laid down a specific classification and distinction too, and had provided for the circumstances under, which the High Courts can scrutinize the principal order of cancellation of the registration, which can be widely enumerated on scrutinizing the judgment of the full bench. On the basis of these seven major guiding factors, which has been provided by the judgment of the Hon'ble Gujarat High Court, for the purposes of principle of attracting Article 226 of the Constitution of India, for the purposes to scrutinize the order which has been passed under Section 29 (2) (c) of the Uttarakhand VAT Act, the principal grounds, which has been laid down by the full bench of the Hon'ble Gujarat High Court are as follows:-

(1) That the writ jurisdiction, can be extended to scrutinize the principle order of cancellation of registration, subject to the condition, that the order has been passed **without jurisdiction**.

In fact, it is not a case, ever argued at any stage, pleaded by the petitioner, nor even established by scrutinizing the order dated 21.09.2019 itself, that the principal order has been passed by the respondent No.2, i.e. the Assistant Commissioner, GST, was without jurisdiction. Hence, this principle laid down by the full bench of the Hon'ble Gujarat High Court from the said perspective would not be applicable under the circumstances of the present case.

(2) The other exception which has been carved out by the Hon'ble Gujarat High Court, is when a situation emerges that the Assistant Commissioner, who has cancelled the registration or any other authority, **has assumed the jurisdiction**, within itself, to pass the impugned order.

It is yet again not a case, ever argued or revealed from the impugned action, even that the impugned order of 21.09.2019, as when it has been passed by



the Additional Commissioner, was by way of an assumption of jurisdiction, which was otherwise not statutorily vested in him.

(3) The next exception which has been argued, and which has been left open by the Hon'ble Gujarat High Court, to be exercised by High Courts, in order, to venture into the propriety of the principal order of cancellation of the registration, is that the authority cancelling the registration has exercised its jurisdiction, **in excess of its power under law or had over-ruled the procedure.**

If Section 29 (2) (c) of the Act, is itself taken into consideration in the context of the factual backdrop which engages consideration in the circumstances, of the present case, the powers exercised by the Assistant Commissioner, was falling well within the ambit of its power which has been vested in him, under, Section 29 (2) (C) of the Act, because admittedly the petitioner has come up with a case; that he couldn't file the returns, for the period of six months, on account of his inability due to the financial crisis, and secondly due to the alleged Covid-19 pandemic situation, which was otherwise according to my opinion was not a situation which was at all prevalent at the relevant point of time, when the petitioner was supposed to submit his returns within the period prescribed therein.

(4) The full bench of the Hon'ble Gujarat High Court has carved out yet an another exception for an inference under Article 226 of the Constitution of India, and its only when the competent authority cancelling the registration, **has over-step the exercise of its powers.**

It is not so in the present case because if the order of 21.09.2019, is scrutinized, it apparently speaks about, and which is also an admitted case of the petitioner

too, that the returns for the period of six months was not filed, and hence it cannot be said that the authority, while passing the order of cancelling the registration, had over-stepped in the exercise of its power, which has been otherwise vested with it under the law. Because the factum of default was apparent and admitted, which attracted, the provisions contained under Section 29 (2) (c).

(5) Another exception which has been carved out by the full bench of the Gujarat High Court, is when the authority has barged over its jurisdiction and has then cancelled the registration. It is not a case here, where the authority cancelling the order **has misinterpreted or misapplied the provisions of Section 29 (2) (c)** of the Act, which provided with an inherent power to the Assessing Authority i.e. Assistant Commissioner, GST, to cancel the registration in an event of an apparent non submission of the return within the time period as prescribed, therein. Hence, which in the instant case is apparently borne out from the records.

(6) The another exception, which has been carved out, by the full Bench of Gujarat High Court, as argued is that when the order itself apparently, on the face of it shows, **that it was suffering from the procedural flaw.**

Which cannot be a case, in the present case, for the reason being, admittedly according to the petitioner himself, that before resorting to the procedure for cancellation of the registration, the petitioner was issued with the show-cause notice on, 09.09.2019.

In case if the allegations of non communication of the said show cause notice is shifted on the Advocate, in fact, it is not an exception, which has been dealt with by the full Bench of the Hon'ble Gujarat High Court, in which the said case could be brought within an ambit of non adherence of the

procedural flaw, by the Assessing Authority, cancelling the registration;

Because non communication of the information, i.e. the show cause notice, which the petitioner contends to have been admittedly imparted to the Counsel, would mean, that it was an internal flaw in his own arrangement, which was made by the petitioner himself for pursuing the proceedings, before the Assistant Commissioner with regards to the fastening of the GST liability upon him, thus the department or the authority cannot be fastened upon the said responsibility, which was failed to be reckoned by the petitioner.

(7) Lastly the full bench of the Hon'ble Gujarat High Court has provided, that the court can interfere under Article 226 of the Constitution of India, to scrutinize the validity of the principal order of cancellation of the registration, subject to the condition that **it is established that it was in violation of the principle of natural justice.**

Which could not be a case here for the reasons dealt above, because once admittedly the show-cause notice was issued to the petitioner and it was not responded to and the petitioner or his counsel, had chosen not to respond then it cannot be said, that the order suffers from the violation of principles of natural justice, when the petitioner himself has derelicted in availing the opportunity of hearing.

13. Hence in that eventuality, the impugned orders, which are under challenge, cannot be said to be brought within the ambit of any of the exceptions culled out by the Full Bench judgment of the Hon'ble Gujarat High Court, in order to enable the writ courts to exercise its inherent jurisdiction under Article 226 of the Constitution of India, to scrutinize the principal order of cancellation of registration

dated 21.09.2019. Hence, since the appeal itself has been dismissed on the ground of limitation, the writ remedy would not be available to the petitioner. Hence, the writ petition lacks merits and the same is accordingly dismissed.

**(Sharad Kumar Sharma, J.)**

30.09.2021

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