

**GST authorities cannot embark upon the process of assessment, in the guise of considering the application for revocation of cancellation of registration**

The Hon'ble Madras High Court in *Ramakrishnan Mahalingam vs. State Tax Officer & Anr. [W.P. No. 15081 of 2020 and WMP. Nos. 18799, 18801 & 18797 of 2020, dated April 30, 2021]* directed the Revenue Authority to pass an order reviving the GST registration of the assessee. Held that, in the guise of considering the application for revocation of cancellation of registration, the Authority cannot embark upon the process of assessment. Further, granted liberty to take up the matters of assessment afterwards in terms of applicable provisions.

**Facts:**

Ramakrishnan Mahalingam (“**the Petitioner**”) was issued a GST Registration Certificate on August 02, 2018 effective from July 1, 2017. A Show Cause Notice dated July 22, 2019 (“**SCN**”) was issued to the Petitioner, by the State Tax Officer, GST (“**Respondent No. 1**”) calling upon the Petitioner to show cause as to why the GST registration should not be cancelled, since the Petitioner had not filed returns for a continuous period of six months. Thereafter, the GST registration of the Petitioner was cancelled on September 16, 2019.

As against the order of cancellation, two applications were filed by the Petitioner for revocation of cancellation of registration under Section 30 of the CGST Act, which were rejected vide order dated July 24, 2020 and September 09, 2020 respectively due to non-compliance of the Petitioner to SCN issued and due to outstanding interest on belated payment of tax dues and for allegedly wrongful claim of Input Tax Credit (“**ITC**”) respectively.

Subsequently, an appeal before Deputy Commissioner (ST) (“**Respondent No. 2**”) was filed by the Petitioner against the order dated July 24, 2020. However, Respondent No. 2 rejected the appeal of the Petitioner and issued the deficiency memo dated October 05, 2020 (“**Deficiency Memo**”), on the grounds that the ITC availed by the Petitioner for various periods was ineligible and further instructed the Petitioner, to remit the amount due in order to have the appeal admitted.

Being aggrieved, the Petitioner has filed this petition.

The Respondent No. 1 and Respondent No. 2 (“**Respondents**”) has contended that the revival of GST registration is conditional upon the Petitioner satisfying tax dues and substantiating its claim of ITC.

**Issue:**

Whether the Respondents are correct in making assessment while considering the application for revocation of cancellation of GST registration of the Petitioner?

**Held:**

The Hon’ble Madras High Court in ***W.P. No.15081 of 2020 and WMP.Nos.18799, 18801 & 18797 of 2020, dated April 30, 2021*** held as under

- Noted that, the Petitioner has sought the revival of GST registration only, and in the guise of considering the application for revocation of cancellation of Petitioner’s GST registration, the Respondents cannot embark upon the process of assessment. Therefore, the contention of the Respondents that the revival of registration is conditional, is misconceived.
- Stated that, an assessment would have to be made by the authority in terms of Section 73 of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) or other applicable provision after following the procedure set out therein, and it is only in the course thereof that the officer may consider and decide questions of levability of tax and claim of ITC.
- Thus, to state that registration will not be revived since the Petitioner has incorrectly availed of ITC would be putting the cart before the horse.
- Observed that, the Petitioner has filed monthly returns as well as annual returns for the periods January 2017-18 to September 2019-20 and financial years 2017-18 and 2018-19 and has also remitted late fee for filing of belated returns, being the only conditions that are to be satisfied by the Petitioner for grant of revocation of cancellation of registration. Therefore, the cancellation of the registration is incorrect and improper.

- Directed the Respondent No. 1 to pass an order reviving the GST registration of the Petitioner and granted liberty to the Respondent No. 1 take up the matters of assessment afterwards, in accordance with the law.

**Relevant Provisions:**

**Section 30 of the CGST Act:**

*“Revocation of cancellation of registration.*

*30. (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 State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.”*

We have recently released the **6<sup>th</sup> Edition of our GST Book titled “GST LAW AND COMMENTARY – WITH ANALYSES AND PROCEDURES”, in a set of 3 Volumes**. We thank you all for the support and your enduring response.

Have a look at the complete tour of the Book at: <https://rb.gy/3hifj3>

*Order your copy now and be a part of GST learning excursion in most comprehensive and lucid form !!*

This book can be ordered online at: <https://rb.gy/benrpb>

***DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.***