

GST provisions cannot be interpreted to deny the right to trade and commerce to any citizen

The Hon'ble Bombay High Court in *Rohit Enterprises v. the Commissioner and Ors. [Writ Petition No. 11833 of 2022 dated February 16, 2023]* has quashed and set aside the Notice issued under Section 29(2) of the Central Goods and Services Tax Act, ("**the CGST Act**") and the consequential order of cancellation of GST Registration. Held that it is not the object of the GST law to curtail the right of the assessee to carry out business. Further restored the GST registration of the assessee which was cancelled due to non-filing of GST returns.

Facts:

Rohit Enterprises ("**the Petitioner**") is a proprietary firm engaged in the business of fabrication work. The Petitioner submitted that it had undergone angioplasty and the firm suffered financial set back during the pandemic therefore, the GST returns from August, 2021 could not be filed. The Revenue Department ("**the Respondent**") issued a Notice under Section 29(2) of the CGST Act dated February 28, 2022 ("**the Impugned Notice**") wherein, the Petitioner was called upon to furnish an explanation as to why GST registration should not be cancelled.

The Petitioner filed a reply to the Impugned Notice on March 3, 2022 stating the financial problems. However, the Respondent passed an Order dated March 14, 2022 ("**the Impugned Order**") wherein, the GST Registration of the Petitioner was cancelled with effect from August 21, 2022. Further, an application was filed by the Petitioner for revocation of cancellation of GST Registration which was rejected vide order dated May 17, 2022. Thus, an appeal was filed by the Petitioner challenging the cancellation of GST registration, which was rejected on the ground of limitation that the appeal has been submitted beyond the prescribed period under Section 107 of the CGST Act.

Being aggrieved, this petition has been filed.

The Respondent contended that, the Petitioner has already availed statutory remedy and hence, is not entitled to invoke extraordinary jurisdiction under Article 226 of the Constitution of India.

Issue:

Whether the GST Registration of the Petitioner be restored to protect fundamental rights under Article 19 and 21 of the Constitution of India?

Held:

The Hon'ble Bombay High Court in ***Writ Petition No. 11833 of 2022*** held as under:

- Stated that, the provisions of the GST enactment cannot be interpreted in a way that denies the right to trade and commerce to any citizen, as it is a constitutional guarantee that must be enforced regardless of any shortcomings in the GST enactment.
- Observed that, non-reviving the GST Registration of the Petitioner would lead to the loss of revenue for the state and the ultimate goal of the GST regime would be defeated.
- Stated that, the Petitioner deserves a chance to return back to the GST fold and carry on its business in legitimate manner.
- Further stated that, with regard to the issue of limitation, since it is a matter of mere cancellation of GST Registration, the issue of limitation will not be a major concern since any right accrued to the state, would not be adversely affected by the cancellation of GST Registration.
- Relied on the judgment of Hon'ble Supreme Court in ***Mafatlal Industries Ltd. v. Union of India [(1997) 5 SCC 536 dated December 19, 1996]*** wherein, it was observed that, jurisdiction of the High Court under Article 226 of the Constitution of India or Supreme Court under Article 32 cannot be restricted by the provision of any Act to bar or curtail remedies and that the Constitutional Courts in exercise of such powers cannot ignore law nor can it override it.

- Held that, the Petitioner is a sufferer of unique circumstances resulting from the pandemic and its health barriers and would face great hardship without GST Registration, which would adversely affect its right to livelihood.
- Further held that, as the statutory appeal was dismissed on a technical ground, it is appropriate to exercise jurisdiction under Article 226 of the Constitution of India to address the situation.
- Further held that, it is not the object of the GST law to curtail the right of the Petitioner to continue business and to contribute to the state's revenue.
- Quashed and set aside the Impugned Notice and the Impugned Order.
- Restored the GST Registration of the Petitioner subject to the condition that the Petitioner files up to date GST returns and deposits entire pending dues along with applicable interest, penalty and late fees as per Rule 23 (1) of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules").

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