

Stayed the order of cancellation of GST Registration of the assessee for continuing the trading activities

The Hon'ble Kerala High Court in *APCO Automobiles Private Limited v. Superintendent of Central Tax and Central Excise and Ors. [WP(C) No. 11808 of 2022 (A) dated May 10, 2022]* stayed the order of cancellation of GST Registration and directed the Revenue Department to open the GST site so as to enable the assessee to continue their trading activities in relation to the stocks held by them at the time of passing of order for cancellation of GST Registration, for a period of two weeks.

Facts:

APCO Automobiles Pvt. Ltd. ("**the Petitioner**") is Authorised Dealers for TATA Automobiles and spare parts. The Petitioner has challenged the order of cancellation of its GST Registration ("**the Impugned Order**") by the Revenue Department ("**the Respondent**") on the grounds of non-filing of return in GSTR-3B.

The Petitioner has contended that due to inordinate delay in collection of sale proceeds and COVID, attendant circumstances and losses, the Petitioner was unable to raise funds to fully discharge the output tax liabilities from April 2020 onwards and consequently, the Petitioner was unable to file Returns in GSTR-3B since the system did not accept returns without entire payment of tax. Further the Petitioner on issuance of the Show Cause Notice ("**SCN**"), sought time and requested that the matter may be kept in abeyance.

Furthermore, though the CGST Act provides for levy of late fee, in case of delayed returns and also provide for levy of interest for delayed payment of tax due on the value of output supplies made, GST site would not accept returns, unless tax due as per return is paid and particulars incorporated. This unauthorized stipulation in the GST Site has resulted in

Petitioner's inability to file Returns for which their Registration has been cancelled, which is a serious flaw in the GST site.

However, the Petitioner raised sufficient finances to meet the tax liability for the months of April 2020 to December 2020 as well as January 2021 to March 2021 and immediately thereafter, uploaded the Returns, but the Petitioner was not able to file application for revocation of cancellation of registration, within the time stipulated under Section 30 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**").

Subsequently an appeal was filed before the Appellate Authority, wherein it was notified that the Petitioner would not be able to issue invoices for the sales made to those from whom advances had been taken and also to sell the "stock-in-hand" supported by invoices, in the absence of which such dealers will not be able to seek input tax credit ("**ITC**"), unless such cancellation is revoked. However, such appeal was rejected on the grounds of non-filing of revocation application within the extended period and there is no provision under the CGST Act to extend the time limit for filing the revocation application. Hence, this petition has been filed.

Issue:

Whether cancellation of GST Registration due to non-filing of GST Return can be condoned?

Held:

The Hon'ble Kerala High Court in ***WP(C) No. 11808 of 2022 (A) dated May 10, 2022*** held as under:

- Stayed the Impugned Order and directed the Respondent to open the GST site for the Petitioner to continue with the trading activities in relation to the stocks held by them during passing of the Impugned Order, for a period of two weeks.

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