

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 5673 of 2023

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M/S RADHE PACKAGING
Versus
UNION OF INDIA

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Appearance:

KUNTAL A PARIKH(7757) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 1,2,3

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CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 05/04/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Heard learned advocate Mr. Kuntal Parikh for the petitioner and learned Assistant Government Pleader Mr. Raj Tanna upon service of copy of the petition in advance.

2. What is prayed in this petition is to set aside the order dated 10.09.2022 whereby the registration of the petitioner under the Gujarat Goods and Services Tax Act, 2017, came to be cancelled. It is also prayed to set aside the show cause notice dated 10.08.2022, which preceded the order of cancellation. The third prayer is to direct the respondent authorities to restore the registration of the petitioner.

3. The show-cause notice whereby the GST

registration of the petitioner was proposed to be cancelled mentioned more than one ground that the returns furnished by the petitioner under Section 39 of the Central Goods and Services Tax Act, 2017 were with incomplete details and that there was failure to furnish returns for a continuous period of six months.

3.1 Reply dated 10.09.2022 came to be filed by the petitioner pursuant to the show-cause notice, which was however not accepted and the order of cancellation of registration dated 10.09.2022 was passed.

3.2 When the text of the order dated 10.09.2022(Annexure-A) is noticed, the ground of Section 39 of the Act appears to have been dropped. The cancellation is ordered on the ground that the tax payer has not filed GST returns for more than six months and that the tax payer has not responded by filing such returns.

4. In course of the hearing, learned advocate for the petitioner invited attention of this Court to the details figuring in the tabular form (page 41 of the compilation of the petition) which shows, according to the petitioner, that the returns were filed prior to the cancellation. It was submitted that after cancellation, in view of the cancellation, returns could not be filed. It was submitted that however,

after cancellation of the registration, in absence of registration number, the returns could not be filed.

5. In response to the grievance of the petitioner regarding cancellation of the registration on the ground of non-filing of the returns of income, learned Assistant Government Pleader produced copy of the Notification dated 31.03.2023 issued under Section 148 of the Central Goods and Service Tax Act, 2017.

5.1 The notification reads as under,

NOTIFICATION

New Delhi, the 31st March, 2023

No. 03/2023-CENTRAL TAX

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 clause (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 the 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.

[F. No. CBIC-20013/1/2023-GST]
ALOK KUMAR, Director

5.2 Clause (c) of the aforesaid Notification would apply to the facts of this case for which there is no dispute.

6. As the Notification would indisputably apply to the facts of this case, the petitioner may approach the competent authority to avail the benefit of the Notification and seek revocation of the cancellation of registration.

6.1 If the petitioner approaches the competent authority in light of the Notification dated 31.03.2023, the authority will take appropriate decision without booking any delay.

7. Without expressing anything otherwise on the merits of the case, the petition is accordingly disposed of.

(N.V.ANJARIA, J)

(D. M. DESAI, J)

BIJOY B. PILLAI