IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (T) No. 5757 of 2022

Md. Naushad Alam. ……**Petitioner**

Versus

1. The Union of India through the Principal Commissioner, Central Goods and Service Tax (CGST), Central Revenue Building, 5A, Main Road, Ranchi.
2. Deputy Commissioner, CGST & Central Excise, Ozone Galleria, Ashok Nagar, P.O. P.S. Dhansar, District-Dhanbad.
3. Assistant Commissioner, CGST & Central Excise, Dhanbad Division, H.E. School Road, Hirapur, P.O. P.S. & District-Dhanbad.
4. Superintendent, CGST & Central Excise, Urban Dhanbad, H.E. School Road, Hirapur, P.O. P.S. and District-Dhanbad.…..**Respondents**

Coram: THE HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
THE HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. P.P.N. Roy, Sr. Advocate
For the Resp.-CGST : M/s Amit Kumar, Ashish Kumar Shekhar, Advocates

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09/24.4.2023 Heard the parties.

2. Though, counter affidavit has not been filed despite time granted to the Respondent CGST, but learned counsel for the petitioner prays that writ petition can be disposed of in the light of the Notification No. 03/2023-Central Tax, G.S.R. 246(E) issued vide Gazette Notification dated 31.03.2023 by the C.B.I.C, Department of Revenue, Ministry of Finance, Government of India.

3. Writ petition was preferred with the following prayer.

> (A) For quashing the order Cancellation Order of GSTN vide Reference Number ZA2001200166711 Dated 23/01/2020 Application Reference No.(ARN):AA2001219997742N Dated:20.12.2019 (i.e. Annexure-2) passed by Respondent No. 4 Superintendent, CGST Urban Dhanbad with reference to the show cause notice vide reference no. ZA201219014180B dated 20.12.2019 which is not valid because the show cause notice is issued on which reply was seeking to furnish before the under signed the place, date and time was missing. Further direction may be issued to the respondents to revoke the GSTN-2 OBLUPA1785Q1ZM which has been cancelled vide order dated 23.1.2020 i.e. Annexure-2.

In substance, petitioner seeks quashing of the impugned Order-in-Original and Order-in-appeal, whereby the cancellation of GST registration stands affirmed.

4. Learned counsel for the petitioner submits that by virtue of Notification No. 03/2023, the registered person whose registration has been cancelled

under Clause (b) or Clause (c) of sub-section (2) of Section 29 of the CGST Act on or before the 31st December 2022, may apply for revocation of cancellation of such registration upto 30th June 2023 even if they failed to apply for revocation of cancellation of such registration within the time prescribed in Section 30 of the said Act. However, the registered person shall have to furnish their returns due upto the effective date of cancellation of registration and make 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 such returns. It is submitted that explanation thereto further clarifies that person who failed to apply for revocation of cancellation of registration within the time specified in Section 30 of the said Act, would include 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. It is submitted that the petitioner is ready and willing to avail of this window of opportunity as the petitioner's business has come to standstill due to cancellation of registration. Therefore, writ petition may be disposed of with a direction upon the petitioner to invoke the beneficial provisions of Notification issued under section 148 of CGST Act, 2017 bearing No. 3/2023 intended to ameliorate the difficulties being faced by a class of registered persons who for one or the other reason could not file their returns within the time leading to cancellation of GST registration, as a result of which, their business has come to standstill. Therefore, petitioner may be allowed to approach the competent authority/proper officer for revocation of cancellation or registration within the time prescribed i.e. 30th June, 2023 after following the laid down conditions. It is submitted that the instant notification also covers the case of those whose appeal have been rejected.

5. Learned counsel for the Respondent CGST submits that though counter affidavit could not be filed as instructions are awaited, but in view of the Notification No. 3/2023 dated 31.03.2023 issued by the C.B.I.C, petitioner may avail the opportunity to seek revocation of cancellation of registration by following the prescribed conditions. Learned counsel for the CGST submits that the appeal has been rejected as time barred under section 107(1) and (4) of the CGST Act.

6. Learned counsel for the petitioner submits that in order to avail of the benefit of the instant notification, the impugned order of cancellation of registration, as affirmed in appeal, may have to be set aside.

7. We have considered the submissions of learned counsel for the parties. The petitioner approached this court against the affirmation of the order of cancellation of registration by the Appellate Authority. The petitioner had failed to comply with the provisions of Section 29 (2) (b) (c) of the CGST Act. However, it appears that C.B.I.C on the recommendation of GST Council in its 49th Meeting dated 18.02.2023, has issued the Notification No. 3/2023-Central Tax dated 31.03.2023 in the Extra Ordinary Gazette, which reads as under:

> "**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 (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 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."

8. Apparently, notification appears to be beneficial in nature as it provides a window of opportunity to all such registered persons whose registration were

cancelled for non-compliance of the provisions of Section 29(2) (b) and (c) of CGST Act, 2017. Such registered persons may apply for revocation of cancellation of registration up to 30th June 2023, subject to filing of returns due upto the effective date of cancellation of registration and payment of any amount due as tax along with interest, penalty and late fee in respect of such returns. It is also made clear that no further window or extension of time period for filing application for revocation of cancellation of registration shall be available in such cases. The Explanation to the notification also indicates that the notification shall cover not only those persons who failed to apply for revocation of cancellation of registration within the time specified in Section 30 of the Act, but also those whose appeal against the order of cancellation of registration under Section 107 of the Act stood rejected or they failed to adhere to the time limit specified under sub-section (1) of Section 30 of the said Act to approach the Appellate Authority against the order rejecting application for revocation of cancellation of registration under section 107 of the Act.

9. The petitioner falls in the category of cases where the appeal preferred against the cancellation of GST registration has been rejected under Section 107(1) and (4) of CGST Act as time barred. However, since the provision is beneficial in nature and appears to ameliorate the difficulty faced by such registered persons whose GST registration stood cancelled, the writ petition is disposed of with a direction to the petitioner to approach the proper officer with an application for revocation of cancellation of registration by 30th June 2023, as per the Notification dated 31.03.2023 after complying with the conditions prescribed thereunder.

Needless to say, if the petitioner makes such an application, the impugned orders of cancellation of registration and affirmed by order in appeal, shall not come into the way of the proper officer to consider the prayer for revocation of cancellation of registration in terms of the Notification No. 03/2023. Writ petition is accordingly disposed of.

(Rongon Mukhopadhyay,J)

(Deepak Roshan, J)

Rakesh/-