

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION No.21341/2022 (T-RES)

BETWEEN:

M/S NAGSON AND CO
(A PARTNERSHIP FIRM REPRESENTED
BY ITS PARTNER
SHRI KOLAR NAGARAJ BALASUBRAMANYAM)
HAVING OFFICE AT NO. 42,
INDUSTRIAL SUBURB, 2ND STAGE,
YESHWANTHPUR
BENGALURU -560 022

... PETITIONER

(BY SRI PRADYUMNA HEJIB, ADVOCATE)

AND:

1. THE JOINT COMMISSIONER OF CENTRAL TAX
(APPEALS-II)
4TH FLOOR, TTMC-BMTC COMPLEX
HAL AIRPORT ROAD, DOMMALURU
BENGALURU -560 071

2. THE SUPERINTENDENT OF CENTRAL TAX
GST NORTH-WEST COMMISSIONERATE
2ND FLOOR, SHIVAJI NAGAR
BENGALURU- 560 051

... RESPONDENTS

(BY SRI JEEVAN J.NEERALGI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
IMPUGNED ORDER BEARING ORD-IN-APPEAL BEARING OIA
NO.185/2022-23/JC-AII/GST, DTD: 29.09.2022 PASSED BY R1 AND

DIRECT R2 TO REVOKE THE CANCELLATION OF THE GST REGISTRATION OF THE PETITIONER ANNEXURE-D AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In this petition, petitioner has sought for the following reliefs:

"(a) Issue a writ in the nature of Mandamus or any other writ to issue a writ/order/direction in the nature of Mandamus or any other writ or writs as deemed fit by this Hon. Court to direct to quash the impugned order bearing Order-in-Appeal bearing OIA No.185/2022-23/JC-AII/GST, dated 29.09.2022 passed by Respondent No.1 and direct Respondent No.2 to revoke the cancellation of the GST registration of the Petitioner (Annexure-D).

(b) Grant such other order or direction as deemed fit in the facts and circumstances of the case in the interest of justice."

2. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner submits that due to financial constraints and also due to covid-19 pandemic, petitioner could not make GST

payments on time leading to the show cause notice dated 13.12.2019 being issued to the petitioner and the subsequent order dated 28.12.2020 being passed by the 2nd respondent cancelling the GST registration of the petitioner.

4. Learned counsel for the petitioner also submits that being aggrieved by the said order, petitioner preferred an appeal before the 1st respondent. In the appeal, petitioner specifically contended that the delay on the part of the petitioner for non payment of dues, non filing of returns and preferring an appeal within the prescribed period was on account of financial constraints and due to covid-19 pandemic and as such, the delay in preferring the appeal deserves to be condoned by the 1st respondent – Appellate Authority. By the impugned order dated 29.09.2022 at Annexure-D, the 1st respondent – Appellate Authority dismissed the appeal refusing to condone the delay in preferring the appeal by the petitioner on the ground that he does not have jurisdiction to condone the delay beyond the prescribed period and the condonable period as stipulated in Section 107 of the CGST Act

5. Aggrieved by the impugned orders, the petitioner is before this Court by way of the present petition. It is contended that

though it may not be permissible for the 1st respondent to condone the delay in preferring the appeal, this Court can condone the delay exercising its powers under Article 226 of the Constitution of India as held by this Court in the following decisions:-

(i) Practice Strategic Communications vs. The Commissioner of Service Tax – ILR 2016 KAR 4493;

(ii) Simplex Infrastructure Limited vs. Joint Commissioner of Central Tax – W.A.No.942/2021 dated 03.12.2021 and

(iii) M/s.Himalaya Drug Company vs. Commissioner of Central Tax – W.P.No.10142/2021 dated 08.09.2022.

6. Per contra, learned counsel for the respondents – revenue submits that there is no merit in the petition and the same is liable to be dismissed.

7. As rightly contended by the learned counsel for the petitioner, though the 1st respondent – Appellate Authority does not have any power to condone the delay in preferring an appeal under Section 107 of the CGST Act, in a given case, it is open for this Court to condone the delay by exercising its powers under Article 226 of the Constitution of India. In the instant case, it is the specific assertion of the petitioner that due to financial constraints and

covid-19 pandemic and on account of bonafide reasons, unavoidable circumstances and sufficient cause, it was not possible for him to not only file the GST returns and make payment within the stipulated time, but also could not prefer the appeal within the prescribed period. In my considered opinion, the explanation offered by the petitioner in not making GST payment and delay in filing returns and preferring an appeal deserves to be accepted and by adopting a justice oriented approach, I deem it just and appropriate to set aside the impugned orders and direct the 2nd respondent to restore the GST registration of the petitioner, subject to payment of all dues by the petitioner.

6. In the result, I pass the following:-

ORDER

- (i) Petition is hereby allowed.
- (ii) The impugned order at Annexure-D dated 29.09.2022 passed by the 1st respondent is hereby set aside.
- (iii) The impugned order at Annexure-B dated 28.12.2020 passed by the 2nd respondent cancelling the GST registration of the petitioner is hereby set aside.

(iv) The 2nd respondent is hereby directed to restore the GST registration in favour of the petitioner forthwith without any delay.

(v) The petitioner is also permitted to file GST returns which shall be allowed by the respondents, subject to the petitioner paying all outstanding dues to the respondents within a period of one month from today. Thereafter, the respondents shall proceed further in accordance with law.

(vi) It is made clear that in the event, the dues are not paid within a period of one month from today, the directions issued in the present order would not enure to the benefit of the petitioner.

**SD/-
JUDGE**

PKS