

TAX INFO

Dated 20/04/2022

Latest update on GST Law: **Information regarding Restoration of RC due to time limit extension by CBIC and SC Judgment due to Covid-19 given in Judgment by Gujarat High Court.**

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Name of Petitioner	Tahura Enterprise
Name of Respondent	Union Of India
Court	Gujarat High Court
Date of Judgement	30.03.2022
Appeal No.	R/Special Civil Application No. 3442 Of 2022

Brief Facts of the Case Law:

The writ-applicant is engaged in the business of trading an iron and steel scrap. The Proprietor is uneducated and has only attended the school upto the 4th Standard. Due to personal as well as financial difficulties, the writ applicant could not file the returns under the G.S.T. Act for some months in the year 2019 as the same could be filed only after full payment of the tax dues as per such returns and the writ-applicant was not in a position to pay tax. An impugned order dated 10.7.2019 cancelling the registration certificate of the writ-applicant was passed stating "registration is cancelled for want of compliance". The financial condition of the writ-applicant was not at all sound and they were not in a position to immediately pay the tax dues as per returns and therefore, they did not file restoration application or appeal under the G.S.T. Act under a bona-fide belief that compliance by way of filing of returns would be possible only once they were able to arrange money for paying up the tax as per the returns to file. Thereafter, the Covid pandemic took a grip of the country disrupting all businesses and it also seriously affected the health of the proprietor. Ultimately, in July 2021 the writ-applicant could muster the finances for making payment of tax dues and therefore, they immediately filed a restoration application before the authority. The writ-applicant filed all returns and paid due tax on 06.09.2021. On such basis, the request was made for restoration of the registration certificate which was rejected by impugned order dated 14.09.2021 on the ground that the same is time-barred by limitation.

Contention of the Petitioner:

The Central Board of Indirect Taxes had vide order No. 1/2020-Central Tax, dated 25.6.2020 extended the time period for filing application for restoration and it was clarified that for any order cancelling the registration for non-filing of the returns, if such order was passed up to 12.6.2020, then the time limit for filing application for revocation of such cancellation would start from the date of service of cancellation order or 31.8.2020 whichever is later. **In this case the order cancelling the registration certificate was passed on 10.7.2019 i.e.prior to 12.6.2020 and therefore, the time limit for filing the application for revocation of such cancellation would commence from 31.8.2020.** Such limitation would stand further

extended because of orders passed by the Hon'ble Supreme Court of India, in view of Covid-19 pandemic, extending limitation under general or special statutes for filing petitions/applications/suits/appeals/all other proceedings. As per the last order of Hon'ble Supreme Court dated 10.01.2022 in Suo Moto Writ Petition (C) No.3 of 2020, it was directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation in respect of all judicial or quasi-judicial proceedings. It was further provided that where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, then notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. **The Application requesting for restoration of the registration was made in July 2021 and thereafter, the tax was actually paid on 06.09.2021. Thus, both the events occurred during the subsistence of order of Hon'ble Supreme Court generally extending limitation.** Now that the writ applicant has already made good the outstanding amount of tax, the cancellation of registration should be revoked and the writ applicant must be permitted to resume business.

Decision of the Court:

The fact that the CBIC extended the time limit for filing application for revocation of cancellation of registration and the limitation for all the orders passed on or before 12.06.2020 was to effectively commence from 31.08.2020 and as the application filed by the writ applicant for revocation of cancellation of registration was looked into by a quasi-judicial authority, the order of the Supreme Court extending the period of limitation in view of the Covid-19 Pandemic would apply. The application requesting for restoration of registration was filed in July 2021 i.e. during the period when the order of the Supreme Court extending the limitation was in operation. More importantly, the writ-applicants have paid the requisite amount towards tax on the basis of self-assessed liability on 06.09.2021. Since the registration of certificate of the writ applicant came to be cancelled solely on the ground of non-filing of the returns, which was on account of non-payment of tax and the writ-applicants now having paid such outstanding tax, the registration certificate of the writ-applicants should be ordered to be restored so that they are able to continue with their business.

Therefore, the impugned order dated 10.07.2019 cancelling the registration certificate is hereby quashed and set aside and the Department is directed to forthwith restore the registration certificate of the writ-applicant.

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