

Ms Mohit Enterprises vs Commissioner Of State Gst And Vat ... on 4 March, 2025

Author: Yashwant Varma

Bench: Yashwant Varma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1086/2025

MS MOHIT ENTERPRISES

Through:

versus

COMMISSIONER OF STATE GST AND VAT
DEPARTMENT OF TRADE AND TAXES DELHI

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

ORDER

% 04.03.2025

1. This writ petition has been preferred seeking the following reliefs:

"i. Issue a writ in the nature certiorari and/ or any other appropriate writ, for setting aside the respondent department decision for cancellation of petitioner's registration of goods and service tax vide F.No DT&T/OHA Appeal/SCTT-I/2024-25/1054-1058 dated 30.05.2024 along with the decision of jurisdictional authority i.e. Ld. AVATO, Ward-63, Delhi, bearing Reference No. ZAO71221173262Y dated 28.12.2021 cancelling of the registration of the petitioner w.e.f 01.07.2017 and directing respondent department to restore the same.

ii. Pass any other order(s) as this Hon'ble Court may deem fit and more appropriate in order to grant relief to the petitioner."

2. We had originally stood over the matter awaiting judgment being rendered on M/s Addichem Speciality LLP v. Special This is a digitally signed order.

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Commissioner, Department of Trade and Taxes¹ and the batch of writ petitions connected therewith. That batch was concerned with the interpretation liable to be accorded to Section 107(4) of the Central Goods and Services Tax Act, 2017² and whether the time period for preferment of an appeal could be extended by imputing the general principles of limitation.

3. We had ultimately and on a conspectus of the decisions rendered by various High Courts on the subject as well as the statutory provisions which apply held as under:

"64. A careful reading of the aforesaid decision would bring to the fore that the legislative intention to provide a specific period of limitation, thereby excluding the general applicability of the Limitation Act, 1963, must be respected. The Supreme Court has observed that the plenary powers of the High Court cannot in any case exceed the jurisdictional powers under Article 142 of the Constitution of India, and even the Supreme Court cannot extend the period of limitation de hors the provisions contained in any statutory enactment.

65. Section 107(4) firstly prescribes a general time frame within which an appeal may be preferred. Once that period has elapsed, it stipulates that the appeal may be instituted within a further period of one month. The provision thus prescribes an additional period of one month within which an appeal may be instituted. That section however stops at that and does not allude to aspects such as sufficient cause or other similar factors which may have prevailed and led to the appeal not being lodged within the time prescribed. The provision thus clearly excludes the general principles which the law recognises as relevant for the purposes of condonation of delay. It is this facet of Section 107(4) which appears to have weighed upon various High Courts to hold that the said provision excludes the principles underlying Section 5 and other provisions concerned with condonation contained in the Limitation Act. It is this facet which triggers Section 29 of the Limitation Act and results in the exclusion of the other provisions governing condonation contained in that statute.

66. At this juncture, it would be expedient to refer to few judgments of the other High Courts on the subject. Reference can be invited to 2025 SCC OnLine Del 646 CGST Act This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/03/2025 at 00:17:40 the decision of the Chhattisgarh High Court in Nandan Steels & Power Ltd. v. State of Chhattisgarh, wherein it was held that the statutory timeline for filing an appeal under Section 107(1) of the CGST Act is three months from the date the decision or order is communicated to the appellant. However, Section 107(4) provides a limited extension of one additional month, at the discretion of the appellate authority, if sufficient cause is demonstrated. The Court observed that the Legislature, while allowing an extension in specific instances, did not intend for the Limitation Act to apply to proceedings under the CGST Act. If such

an intention existed, there would have been no need to confer special powers on the High Court to entertain appeals beyond the prescribed period, subject to sufficient cause being shown. This distinction is crucial because, unlike other legislations where Section 5 of the Limitation Act applies automatically via Section 29(2), the CGST Act prescribes a rigid timeframe. Further, the absence of the phrase "but not thereafter" in Section 107(4) does not dilute its mandatory nature.

67. Likewise, the Allahabad High Court in *Yadav Steels v. Commissioner* dealt with a matter wherein the appeal was filed 66 days after the expiry of the additional one-month period, making it ineligible for condonation, decision of the Appellate Authority that refused to entertain it in view of section 107(4) was upheld. Emphasizing the significance of the statutory limitations in tax laws, particularly in the context of the CGST Act, it was also pointed out that limitation provisions are crucial in ensuring the timely resolution of disputes, promoting legal certainty, and facilitating efficient tax compliance. It was held that given the complexity of tax laws and the potential for disputes between taxpayers and authorities, such provisions establish a structured framework that prevents undue delays and ensures fiscal stability. It was thus observed that Section 107 of the CGST Act, being a self-contained provision, prescribes a specific limitation period for filing appeals, reflecting the legislative intent to expedite dispute resolution and by setting strict time limits, the provision ensures that tax-related matters are adjudicated without unnecessary delays, thereby enhancing administrative efficiency and revenue certainty. It was held that Section 5 of the Limitation Act generally allows for extensions in exceptional cases but its application is expressly excluded in taxation statutes where specific timeframes are prescribed.

68. That being the legal position, we unhesitatingly find that the decision of the Calcutta High Court in the case of *Mukul Islam v. Assistant Commissioner of Revenue* wherein the Court overturned the order that had rejected the appeal holding that the CGST law does not explicitly exclude the Limitation Act as also the decision of the Andhra Pradesh High Court in *Venkateshwara Rao* This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/03/2025 at 00:17:40 *Kesanakurti v. State of AP*, wherein it was held that Limitation Act is applicable to condone the delay in filing the appeal beyond one month under the CGST Act, cannot be of any assistance to the petitioners.

69. In summary, the power to condone delay caused in pursuing a statutory remedy would always be dependent upon the statutory provision that governs. The right to seek condonation of delay and invoke the discretionary power inhering in an appellate authority would depend upon whether the statute creates a special and independent regime with respect to limitation or leaves an avenue open for the

appellant to invoke the general provisions of the Limitation Act to seek condonation of delay. The facility to seek condonation can be resorted provided the legislation does not construct an independent regime with respect to an appeal being preferred. Once it is found that the legislation incorporates a provision which creates a special period of limitation and proscribes the same being entertained after a terminal date, the general provisions of the Limitation Act would cease to apply.

70. In view of the forgoing discussion, as it is evident that each of the appeals was filed beyond the prescribed period of limitation provided by Sections 107(1) and 107(4) of the CGST Act, the aforesaid writ petitions lack merit and are accordingly dismissed."

It is thus apparent that insofar as the challenge to the appellate order dated 30 May 2024 is concerned, nothing further would survive.

4. That only leaves us to examine the retrospective cancellation of Goods and Services Tax³ registration of the writ petitioner and which was ordained to come into effect in terms of the impugned order of 28 December 2021 from 01 July 2017.

5. We find from the disclosures made on the record that the aforesaid order was preceded by a Show Cause Notice⁴ dated 11 November 2021 and which reads as follows:

"Show Cause Notice for Cancellation of Registration Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

GST SCN This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/03/2025 at 00:17:40 1 Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 11/11/2021 Place: Delhi Date: 11/11/2021 Ashwani Sales Tax Officer Class II / AVATO Ward 63:Zone 6:Delhi "

6. The petitioner does not appear to have submitted any response to that SCN and which ultimately resulted in the cancellation of its GST registration by the order dated 28 December 2021.

7. As is evident from a reading of the SCN, the same had alleged that the writ petitioner had failed to file returns for a continuous period of six months. This allegation as levelled has not been denied in the body of the writ petition. In view of the above, we are only left to examine the question whether a retrospective cancellation of the GST registration of the writ petitioner was justified.

8. Dealing with an identical question we had in *Riddhi Siddhi Enterprises v. Commissioner of Goods and Services Tax (CGST), South Delhi & Anr.*⁵ held as follows:

"5. As is manifest from a reading of Section 29, clauses (a) to (e) of Section 29(2) constitute independent limbs on the basis of which a W.P.C 8061/2024 dated 25 September 2024 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/03/2025 at 00:17:40 registration may warrant cancellation. While the provision does enable the respondents to cancel that registration with retrospective effect, the mere existence or conferral of that power would not justify a revocation of registration. The order under Section 29(2) must itself reflect the reasons which may have weighed upon the respondents to cancel registration with retrospective effect. Given the deleterious consequences which would ensue and accompany a retroactive cancellation makes it all the more vital that the order be reasoned and demonstrative of due application of mind. It is also necessary to observe that the mere existence of such a power would not in itself be sufficient to sustain its invocation. What we seek to emphasise is that the power to cancel retrospectively can neither be robotic nor routinely applied unless circumstances so warrant. When tested on the aforesaid precepts it becomes *ex facie* evident that the impugned order of cancellation cannot be sustained.

6. We note that while dealing with the right of the respondents to cancel GST registration with retrospective effect and the manner in which such power should be exercised in accordance with the statutory scheme was an issue which was noticed in *Ramesh Chander vs Assistant Commissioner of Goods and Services Tax, Dwarka Division, CGST Delhi & Anr.*⁴ The Court in *Ramesh Chander* taking note of the contours of Section 29 had held:-

"1. The petitioner impugns order in appeal dated 29.12.2023, whereby the appeal filed by the petitioner has been dismissed solely on the ground of limitation. Petitioner had filed the appeal impugning order dated 13.07.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 07.04.2022.

2. Vide impugned Show Cause Notice dated 07.04.2022, petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-

"Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months"

3. Petitioner was in the business of services involving repair, alterations, additions, replacements, renovation, maintenance or remodelling of the building covered above, General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks, General construction services of long-distance underground/ overland/ submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works, General construction services of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/03/2025 at 00:17:40 local water & sewage pipelines, electricity and communication cables & related works, Installation, assembly and erection services of other prefabricated structures and constructions and possessed a GST registration.

4. A show cause notice was issued to the petitioner on 07.04.2022. Though the notice does not specify any cogent reason, there is an observation in the notice stating failure to furnish returns for a continuous period of six months. The show cause notice requires the petitioner to appear before the undersigned i.e. authority issuing the notice. Notice does not give the name of the officer or place or time where the petitioner has to appear.

5. Further the order dated 13.07.2022 passed on the show cause notice does not give any reasons for cancellation of the registration. It, however, states that the registration is liable to be cancelled for the following reason "whereas no reply to notice to show cause has been submitted". However, the said order in itself is contradictory, the order states "reference to your reply dated 16.04.2022 in response to the notice to show cause dated 07.04.2022" and the reason stated for cancellation is "whereas no reply to notice to show cause has been submitted". The order further states that effective date of cancellation of registration is 01.07.2017 i.e. retrospective date.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 13.07.2022 does not qualify as an order of cancellation of registration.

7. As per the petitioner, the said order reflected that the GST of the Petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the Petitioner.

8. We notice that the show cause notice as well as the impugned order of cancellation, are themselves vitiated on account of lack of reason and clarity. The appeal has been dismissed solely on the ground of limitation. Since the very foundation of entire proceedings i.e. show cause notice and the order of cancellation are vitiated, we are of the view that no purpose would be served in relegating the petitioner to the stage of an appeal.

9. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, the proper officer may cancel the GST registration of a person from such date including any This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/03/2025 at 00:17:41 retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. The registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant.

10. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention in this regard is correct, it would follow that the proper officer is also required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

11. The show cause notice does not even state that the registration is liable to be cancelled from a retrospective date.

12. The petition is allowed. The impugned show cause notice dated 07.04.2022, order of cancellation dated 13.07.2022 and the order in appeal dated 29.12.2023 are accordingly set aside. GST registration of the petitioner is restored, subject to petitioner filing requisite returns upto date.

13. It is clarified that since the petitioner could not have filed the return after the GST registration was suspended, there shall be no liability to pay any penalty or fine for delayed filing. However, this would only apply in case petitioner files an affidavit of undertaking that petitioner has not carried out any business or raised invoices or taken any Input Tax Credit after the registration was suspended with effect from 07.04.2022 i.e., the date of suspension of the registration.

14. Respondent would be at liberty to initiate appropriate proceedings in accordance with law after giving a proper show cause notice containing complete details, if so advised. Further this order would not preclude the respondent from initiating any steps in accordance with law, if it is found that the petitioner had violated any provisions of the Act.

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15. Petition is disposed of in the above terms."

7. We further take note of the judgment in Delhi Polymers vs Commissioner, Trade and Taxes & Anr.5 wherein the following was observed:-

"1. Petitioner has filed the appeal impugning order of cancellation of registration dated 15.12.2021 whereby the GST registration of the Petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 04.09.2021.

2. Vide Show Cause Notice dated 04.09.2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

"Collects any amount representing the tax but fails to pay the same to the account of the Central/State Government beyond a period of three months from the date on which such payment becomes due"

3. Petitioner was engaged in the business of Sanitary ware Products & Accessories i.e., Baths, Shower, Washbasins, Seats and Cover etc. and possessed GST registration.

4. Show Cause Notice dated 04.09.2021 was issued to the Petitioner seeking to cancel its registration. However, the Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

5. Further, the impugned order dated 15.12.2021 passed on the Show Cause Notice dated 04.09.2021 does not give any reasons for cancellation. It, however, states that the registration is liable to be cancelled for the following reason "whereas no reply to the show cause notice has been submitted". However, the said order in itself is contradictory. The order states "reference to your reply dated 15.12.2021 in response to the notice to show cause dated 04.09.2021" and the reason stated for the cancellation is "whereas no reply to notice show cause has been submitted". The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 15.12.2021 does not qualify as an order of cancellation of registration. On one hand, it states that the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 15/03/2025 at 00:17:41 registration is liable to be cancelled and on the other, in the column at the bottom there are no dues stated to be due against the petitioner and the table shows nil demand.

7. Learned Counsel for the Petitioner submits that the said order reflected that the GST registration of petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the

Petitioner.

8. He further submits that the petitioner is no longer interested in continuing the business and the business has been discontinued.

9. In terms of Section 29(2) of the Act, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. Registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant.

10. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention is required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

11. It may be further noted that both the Petitioners and the department want cancellation of the GST registration of the Petitioner, though for a different reason.

12. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 15.12.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 04.09.2021 i.e., the date when the Show Cause Notice was issued.

13. It is clarified that Respondents are also not precluded from This is a digitally signed order.

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14. Petition is accordingly disposed of in the above terms."

8. In view of the aforesaid and in light of an abject failure on the part of the authority to assign even rudimentary reasons for a retroactive cancellation, we find ourselves unable to sustain the order impugned."

9. As is manifest from a reading of the SCN, the respondents had failed to place the petitioner on notice of a proposed action to cancel their registration retrospectively. To the aforesaid extent and in light of the principles enunciated in Riddhi Siddhi Enterprises, we find ourselves unable to sustain the final order of 28 December 2021 insofar as it effects cancellation from a retrospective date.

10. Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and quash the order dated 28 December 2021 to the extent that it carries a stipulation of the cancellation coming into effect from 01 July 2017. The cancellation shall consequently take effect from the date of issuance of the SCN, namely, 11 November 2021.

YASHWANT VARMA, J HARISH VAIDYANATHAN SHANKAR, J MARCH 04, 2025/RW This is a digitally signed order.

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