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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/2244/2024**

MOTALEB BHUYAN  
S/O- LATE IBRAHIM BHUYAN,  
PROPRIETOR, HAVING ITS OFFICE AT GURUNANAK NAGAR, NORTH  
BONGAIGAON, BONGAIGAON, ASSAM, PIN-783380

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, FINANCE AND TAXATION DEPARTMENT, DISPUR GUWAHATI  
06, ASSAM

2:THE COMMISSIONER OF STATE TAXES  
ASSAM  
KAR BHAWAN  
DISPUR  
GUWAHATI-06

3:THE JOINT COMMISSIONER OF STATE TAXES (APPEALS)  
ASSAM  
KAR BHAWAN  
DISPUR  
GUWAHATI-06

4:THE ASSISTANT COMMISSIONER OF STATE TAXES  
BONGAIGAON-01  
BONGAIGAON DHUBRI ZONE  
BONGAIGAO

**Advocate for the Petitioner : DR ANKIT TODI, MR. D DUTTA,MS M PARBIN,MS S  
JITANI,MR A NATH,DR B P TODI**



**Advocate for the Respondent : SC, FINANCE AND TAXATION,**

Linked Case : WP(C)/3683/2024

M/S C ZAR TECHNOLOGIES AND ANR  
A PARTNERSHIP FIRM HAVING ITS REGISTERED OFFICE AT HOUSE NO.77  
WALTAS LANE  
NOTUN SARANIYA  
GUWAHATI  
KAMRUP METRO  
REPRESENTED THE PETITIONER NO.2

2: SRI ABHILASH BAROOAH  
SON OF LATE CHANDAN BAROOAH B1  
RADHAKUNJ APARTMENT  
LAXMINAGAR  
RGB ROAD  
GUWAHATI  
KAMRUP METRO  
ASSAM- 781005  
VERSUS

THE STATE OF ASSAM AND 3 ORS  
COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM  
FINANCE DEPARTMENT  
DISPUR  
ASSAM

2:THE COMMISSIONER AND STATE GOODS AND SERVICE TAX  
GUWAHATI  
KAR BHAWAN  
GANESHGURI  
DISPUR  
GUWAHATI- 781006  
ASSAM

3:THE ASSISTANT COMMISSIONER OF STATE TAX  
GUWAHATI C-4  
KAR BHAWAN  
GUWAHATI-06  
ASSAM

4:JURISDICTION OFFICER  
GUWAHATI-C-4



GUWAHATI-C  
KAR BHAWAN  
GUWAHATI-06  
ASSAM

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Advocate for : MR. R S MISHRA  
Advocate for : SC  
FINANCE AND TAXATION appearing for THE STATE OF ASSAM AND 3 ORS

Linked Case : WP(C)/2695/2024

KAMAIAH ENGINEERING SERVICES PRIVATE LIMITED (OPC)  
2ND FLOOR  
EPITOME BUILDING  
G.N.B. ROAD  
SILPUKHURI  
KAMRUP (M)  
GUWAHATI  
ASSAM- 781003  
REPRESENTED BY ITS DIRECTOR SHRI KODA SUDHAKAR RAO

VERSUS

THE STATE OF ASSAM AND 3 ORS  
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM  
MINISTRY OF FINANCE AND TAXATION  
KAR BHAWAN  
GANESHGURI  
GUWAHATI ASSAM

2:THE PRINCIPAL COMMISSIONER OF STATE TAXES  
ASSAM  
ASSAM  
KAR BHAWAN  
G.S.ROAD  
DISPUR  
GUWAHATI-06

3:THE JOINT COMMISSIONER OF STATE TAXES (APPEALS)  
GUWAHATI  
KAR BHAWAN  
DISPUR  
GUWAHATI  
ASSAM-6



4:THE COMMERCIAL TAX OFFICER (SUPERINTENDENT OF TAXES)  
GUWAHATI-A-6  
KAR BHAWAN  
GUWAHATI-6  
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Advocate for : MS. M L GOPE  
Advocate for : SC  
FINANCE AND TAXATION appearing for THE STATE OF ASSAM AND 3 ORS

Linked Case : WP(C)/4500/2024

MONI KANTA DAS  
SON OF LATE MOHAN CH. DAS

RESIDENT OF KATHALGURI VILLAGE NO.1

P.O.- NAGAJAN  
P.S.- DULIAJAN

DIST.- DIBRUGARH

PIN- 786191.

VERSUS

UNION OF INDIA AND 3 ORS  
REPRESENTED BY THE SECRETARY OF GOVERNMENT OF INDIA

MINISTRY OF FINANCE  
NEW DELHI- 110001.

2:THE PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICES  
TAX  
GST BHAWAN KEDAR ROAD  
GUWAHATI- 781001.

3:THE ASSISTANT COMMISSIONER  
CENTRAL GOODS AND SERVICE TAX  
DIBRUGARH DIVISION DIBRUGARH.  
PIN- 786001.

4:THE SUPERINTENDENT  
CENTRAL GOODS AND SERVICES TAX  
TINSUKIA ZONE  
NAHARKATIA



DIST.- TINSUKIA  
ASSAM.  
PIN- 786610.

For the Petitioner(s) : Dr. B. P. Todi, Sr. Advocate  
: Dr. A. Todi, Advocate  
: Mr. N. Hawelia, Advocate  
: Mr. A. Khanikar, Advocate  
: Mr. R. S. Mishra, Advocate  
For the Respondent(s) : Mr. S. C. Keyal, Standing Counsel  
: Mr. B. Gogoi, Standing Counsel

Date of Hearing : **28.11.2024**

Date of Judgment : **11.03.2025**

**BEFORE**  
**HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT AND ORDER (CAV)**

Heard Dr. B. P. Todi, the learned Senior counsel assisted by Dr. A. Todi, the learned counsel appearing on behalf of the petitioner in WP(C) No.2244/2024; Ms. N. Hawelia, the learned counsel appearing on behalf of the petitioner in WP(C) No.2695/2024; Mr. R. S. Mishra, the learned counsel appearing on behalf of the petitioners in WP(C) No.3683/2024 and Mr. A. Khanikar, the learned counsel appearing on behalf of the petitioner in WP(C) No.4500/2024. I have also heard Mr. S. C. Keyal, the learned Standing counsel appearing on behalf of the CGST and Mr. B. Gogoi, the learned Standing counsel appearing on behalf of the Finance and Taxation Department of the Government of Assam.

2. The issues involved in the batch of 4 (four) writ petitions primarily



related to the cancellation of the registrations under Central Goods and Service Tax Act, 2017 and State Goods and Service Tax Act, 2017. The question which arises for consideration before this Court is as to whether this Court should interfere with the cancellation of the registrations or in other words, revoke the cancellation of the registrations in the respective facts of the cases before this Court. Under such circumstances, it is relevant to narrate the relevant facts which led to the filing of the instant batch of writ petitions before this Court.

**WP(C) No.2244/2024:**

3. The petitioner herein claims to be a proprietor of a firm in the name and style of M/S M. Bhuyan. The petitioner was registered under the provisions of the Central Goods and Service Tax Act, 2017 (for short 'the Central Act') and was issued a certificate of registration on 20.09.2017. The petitioner was also granted a Registration Number bearing No. 18AJBPB2744A1ZY.
4. It is the case of the petitioner that the petitioner is in the business of contractual works of supplying of various products. A show cause notice was issued for cancellation of the registration upon the petitioner on 06.11.2019 asking the petitioner to submit a reply within seven days from the date of service of the said notice. The said show cause notice is enclosed as Annexure-2 to the writ petition and the reason assigned therein "Any taxpayer other than composition taxpayer has not filed returns for a continuous period of six months". The petitioner claims that there was no personal notice issued to the



petitioner and was simply uploaded in the website by the Proper Officer. It is the further case of the petitioner that the petitioner having no proper notice, did not submit any reply.

5. Subsequent thereto, on 18.11.2019, the registration of the petitioner was cancelled. The cancellation of the registration has been enclosed as Annexure-3 to the writ petition. It is relevant to take note of that a perusal of the said order for cancellation of registration refers to two contradictory aspects. One, there is a reply submitted by petitioner on 17.11.2019 and the other that there is no reply to the said show cause notice. Apart from that there is no other reason assigned.
6. It is the case of a petitioner that the petitioner came to learn about the suspension and cancellation of its registration in the month of February, 2021 inasmuch as, it is the further case of the petitioner that for the period from November, 2019 on account of financial constraint and also due to the COVID-19 pandemic, he could not coordinate with his tax consultant. Be that as it may, the petitioner could file his return in Form GSTR-1 on 24.03.2021 but the Petitioner was unable to pay the due taxes due to the ongoing financial constraint. The petitioner further states that the petitioner had filed and updated his due return in GSTR-3B on 09.03.2024 for the month of November, 2019 and paid taxes for the period till November, 2019. Be that as it may, as the period seeking revocation under Section 30 of the Assam Goods and Service Tax Act, 2017 (for short 'the State Act') had expired, the petitioner preferred an Appeal under Section 107 of the State Act read with Rule 108(3) of the Assam Goods and Service Tax Rules, 2017



(hereinafter referred to as the 'State Rules'). The said Appeal upon being filed was registered and numbered as FORM GST APL-01 on 12.03.2024. The said appeal was rejected by the Appellate Authority i.e. the Joint Commissioner of State Taxes Appeals vide an order dated 06.04.2024 on the ground of delay and it is under such circumstances, the petitioner had approached this Court by filing the present petition.

7. It is seen that this Court issued notice on 29.04.2024. It is irrelevant to take note of that on 11.09.2024, an affidavit-in-opposition was filed by the Commissioner of Taxes, Assam through the Joint Commissioner of Taxes, Assam. In the said affidavit-in-opposition, it was mentioned that the order against which the appeal was preferred was passed on 18.11.2019 and the appeal having been filed after four years on 12.03.2024, the Appellate Authority could not have condoned the delay even if satisfied with the grounds in view of Section 107(4) of the State Act. It was also mentioned that if the petitioner was continuing with his business, he should close the earlier registration by filing the final return as per the provisions of the State Act by paying all his dues as per the return and thereafter obtain fresh registration.
8. To the said affidavit-in-opposition, an affidavit-in-reply was submitted wherein at paragraph No.8, it was categorically mentioned that in the event the Registration Certificate is not restored, the petitioner would be denied of his right to livelihood which would be in violation to Article 21 of the Constitution. It was further mentioned that there is no provision under the Central Act as well as the State Act for re-application of a fresh Registration Certificate and in absence of a



Registration Certificate, the petitioner would not be able to raise any bills/invoices or enter into any contractual works which would affect the right of the petitioner to earn a livelihood. Additionally, it was mentioned that even if there is a new registration, the petitioner would be denied the Input Tax Credit which is available and accumulated under the present cancelled registration certificate.

**WP(C) No.2695/2024:**

9. The petitioner herein is an OPC Company which is duly registered under the State Act and was issued a Registration Certificate bearing Registration No.18AAGCK0367D1ZP. The said registration was issued on the 26.09.2017. It is the case of the petitioner that the petitioner was regularly filing its returns under the respective provisions of the Central Act and State Act. There was no difficulty in the filing of the returns till the year 2020. However, on account of the COVID-19 pandemic, the parents of the tax consultant of the petitioner namely Shri Dibyajyoti Das had expired. The petitioner though had remitted the amounts to the consultant but the consultant did not take any steps for filing of the returns. In that regard, the petitioner has enclosed the documents evidencing payment of the amounts to the consultant as Annexure-II (series). Be that as it may, as there was no returns filed by the consultant, it was shown in the GSTN portal account of the petitioner that the show cause notice was issued on 29.06.2021. The petitioner could not however download the said show cause notice and the petitioner further avers in the writ petition that till the date of filing of the writ petition, the petitioner was not in a



position to download the said show cause notice. A screenshot of the downloaded portal showing the issuance of a show cause notice dated 29.06.2021 is enclosed as Annexure-III. Thereupon, on 17.07.2021, the Proper Officer issued an order thereby cancelling the GST Registration of the petitioner. It is the case of the petitioner that from a perusal of the said order dated 17.07.2021, it would be seen that there was no due payable by the petitioner.

10. The order of cancellation was enclosed as Annexure-IV to the writ petition. A perusal of the order dated 17.07.2021 would show that a contradictory stand was taken. On one hand it has been mentioned that there is a reply submitted by the petitioner on 08.07.2021 and on the other hand, it has been mentioned that there is no reply submitted to the show cause notice dated 29.06.2021. No other reasons assigned as regards cancellation.
11. The petitioner thereupon filed an appeal by engaging a different consultant taking into account that the earlier consultant did not take any steps. The Appeal was registered and numbered as GST APL-01. The appeal was however dismissed vide an order dated 25.04.2024 on the ground that the said appeal was filed beyond the period of limitation and it is under such circumstances, the petitioner has approached this Court by filing the present writ petition.
12. This Court duly takes note of the fact that pursuant to the filing of the instant writ petition, on 28.06.2024 notice was issued. The record reveals that an affidavit-in-opposition was filed by the Commissioner of Taxes through the Joint Commission of Taxes, Assam. In the said



affidavit-in-opposition, it was mentioned that as the petitioner did not furnish returns and paid the due taxes to the State for more than six months, the show cause notice was issued on 29.06.2021. It was further mentioned that show cause notices are issued under the GST regime through the portal only without any interface with the taxpayer. However, the petitioner neither paid the tax nor furnished the reply to the show cause notice within the stipulated time and as such, its registration was cancelled on 17.07.2021. Further to that, the petitioner did not take any steps for revival. The Appeal which was filed was also delayed by more than two years and such period cannot be condoned in terms with Sub-Section (1) and Sub-Section (4) of Section 107 of the State Act by the Appellate Authority. It was further mentioned that the petitioner therefore should close the earlier registration by filing the return as per the provisions of the State Act by paying all its dues and thereafter obtain a fresh registration and in that process, the provisions of the State Act would not be violated and the Government would get due revenue from the petitioner.

13. No reply was filed to the said affidavit-in-opposition by the petitioner.

**WP(C) No.3683/2024:**

14. The petitioner No.1 herein is a partnership firm and the petitioner No.2 is one of the partners. The petitioner No.1 is an assessee registered under the State Act bearing Registration No. 18AAEFC7833K3Z3. The said registration was issued on 25.09.2017 in favour of the petitioner No.1. During the period of COVID-19 pandemic, a show cause notice was issued to the petitioner No.1 on 11.02.2021 by the Proper Officer.



The said show cause notice has been enclosed as Annexure-B to the writ petition. The reason cited in the said show cause notice is "Any taxpayer other than composition taxpayer has not filed returns for a continuous period of six months". The petitioner No.1 was asked to submit its reply within 30 days from the date of service of the said notice and further, a date of hearing was fixed on 22.03.2021 at 11 AM.

15. Similar to the earlier two writ petition being WP(C) No.2244/2024 and WP(C) No.2695/2024, an order was passed on 23.03.2021 by the Proper Officer wherein contradictory aspects were mentioned to the effect that the petitioner No.1 had submitted a reply on 23.03.2021 as well as the petitioner No.1 had not submitted any reply to the show cause notice. There is no reasons assigned in the order for cancellation of the registration. Be it as it may, it is the case of the petitioners that at that relevant time, as COVID-19 pandemic restrictions were going on, the office of the petitioners was closed and the petitioner No.2 could not visit the GST portal. It is the further case of the petitioners that the petitioners post the COVID-19 pandemic, arranged funds and filed their returns up to March, 2021 as allowed by the GST portal.
16. It is also the case of the petitioners that while updating the returns, the petitioners have deposited an amount of Rs. 12,00,190/- towards tax and late fees. It is seen that these returns were filed on 05.07.2024 as would appear from Annexure-D (Colly). The petitioners thereupon tried to file an application for revocation of the cancellation of the registration but when such attempts were made, it was shown in the



portal screen that the timeline of 270 days from the date of cancellation of the order provided to the taxpayer to file their application for Revocation of Cancellation had expired. The petitioners initially thought of filing an Appeal in terms with Section 107 of the Central Act but taking into account the provisions of Sub-Section (1) and Sub-Section (4) of Section 107 of the Central Act, filing of an appeal would not be an alternative and efficacious remedy, for which the petitioners have approached this Court.

17. This Court by an order dated 26.07.2024 issued notice. Pursuant thereto, an affidavit-in-opposition was filed by the respondent No.2 wherein it was mentioned that as the petitioners did not furnish any returns due to the State for more than six years, the show cause notice was issued on 11.02.2021. It was mentioned that the petitioners then also did not pay the tax and also did not submitted the reply to the show cause notice and it was under such circumstances, the registration was cancelled on the 23.03.2021. It was further mentioned that though the registration was cancelled on 23.03.2021, the Petitioners continued to do its business without taking any recourse to revive its registration and also not depositing the due tax to the State Exchequer. It was also mentioned that the petitioners have approached this Court in the year 2024 i.e. after three years from the cancellation of the registration and under such circumstances, the petitioners ought to close down its earlier registration by filing final return as per the provisions of the State Act by paying all their dues in the said return and thereafter obtain fresh registration.



18. To the said affidavit-in-opposition, a reply was filed by the petitioners on 26.09.2024 wherein it was mentioned that the petitioners had already complied with all its defaults and have made payment of GST amount by filing GST returns till March, 2021 as allowed by the GST portal and is ready and willing to pay any amount which is legally payable on the part of the petitioners. It was further stated by the petitioners in the affidavit-in-reply that as the GST Registration Number of the Petitioner No.1 is already available with the existing vendors and the parties with whom the Petitioner No.1 had earlier conducted business transactions and also intended to conduct future business transactions after the revival of the GST registration, it would cause great inconvenience if the GST registration is not revived. It was further stated that it would not prejudice the Government rather, if the cancellation of the GST registration is revoked, the petitioners would have to file their return from April, 2021 to till date for which the State Exchequer would be getting the revenue as well as the late fees.

**WP(C) No.4500/2024:**

19. The petitioner herein is in the business of execution of maintenance work contract with the Oil India, Duliajan and in that regard, his firm in the name and style of "Moni Kanta Das" was registered under the Central Act bearing Registration No.18ADPFS9101C1Z0 and the registration certificate was issued on 18.05.2018. It is the further case of the petitioner that the petitioner continued to file his returns in due time. However, on 05.01.2021, a show cause notice was issued by the Proper Officer whereby the petitioner was asked to submit the reply



within seven days from the date of service of the said notice.

20. It is the further case of the Petitioner that he did not submit a reply as he was not much conversant with the online procedure. Be that as it may, on 10.02.2021, the registration of the petitioner was cancelled. In this case also, the order of cancellation refers to a reply dated 17.01.2021 filed by the petitioner and it was further mentioned that upon examination of the reply by the petitioner and the submissions made at the time of hearing, the registration was cancelled for returns having not been filed. The petitioner on account of the COVID-19 pandemic could not take further steps. However, subsequently on 29.07.2024, the petitioner submitted his returns up to February, 2021 as was allowed by the GST portal.
21. Pursuant to the filing of the returns, the petitioner tried to take steps for revocation of the cancellation of the registration which was not permitted for the reason that the timeline of 270 days from the date of cancellation order provided to the taxpayer to file application for revocation of cancellation had expired. The petitioner had not filed any Appeal on the ground that as the period for filing of the Appeal and the maximum period that can be condoned had expired in terms with Section 107 of the Central Act, the Appeal, if filed by the Petitioner cannot be taken up on merits. As such, the Petitioner has approached this Court by filing the instant writ petition.
22. It is seen that this Court vide an order dated 06.09.2024 issued notice. The respondents have not filed their affidavit till the time the matter was taken up for hearing.



23. This Court had heard the learned counsels for the petitioners and perused the materials. The submissions so made by the learned counsels are in terms with the pleaded case of both the parties and as such for the sake of brevity, this Court is not repeating the same.

**ANALYSIS AND DETERMINATION :**

24. In the backdrop of the above, the question which arises as to whether this Court should exercise its jurisdiction under Article 226 of the Constitution to interfere with the orders of cancellation of the registration. To decide the said aspect of the matter, it is therefore relevant to take note of some of the provisions of the Central Act which are pari materia to the State Act as well as the Rules framed therein under.
25. Chapter-VI of the Central Act specifically deals with Registration. Section 22 and 24 of the Central Act stipulates the categories of persons who are liable to be registered. Section 23 refers to those category of persons who are not liable to be registered. Section 25 stipulates the procedure for registration.
26. It is relevant to take note of that Sub-Section (1) to Sub-Section (7) of Section 25 of the Central Act which deals specifically with the procedure as to when a person is liable to be registered under Section 22 or 24 applies for registration. However, Sub-Section (8) of Section 25 is very relevant inasmuch as, if a person who is liable to be registered under Section 22 and 24 fails to obtain registration, the Proper Officer may, without prejudice to any action which may be



taken under the Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

27. The prescription is in Rule 16 of the Central Goods and Service Tax Rules, 2017 (for short 'the Central Rules'). This aspect is important, taking into account that if a person falls within the categories mentioned in Section 22 and 24 of the Central Act, even if he fails to obtain registration, can be suo moto registered by the Proper Officer by following the mandate of Section 25(8) read with Rule 16 of the Central Rules.
28. This Court further finds it relevant to take note of Section 122 of the Central Act and more particularly Clause - (xi), which stipulates that when a taxable person who is liable to be registered under the Act but fails to obtain registration, he is liable to pay a penalty as stipulated in the said Section.
29. The combine reading of Sections 22, 24, 25 and 122 of the Central Act is that the person who is categorized in Sections 22 and 24 is compulsorily liable to be registered in the manner stipulated in Section 25 of the Central Act. It is further seen that if a person is not registered, the Proper Officer can suo moto register him by following the mandate of Rule 16 of the Central Rules. Additionally, Section 122 imposes penalty, if a person fails to obtain registration.
30. It is relevant to take note of Section 29 which relates to cancellation or suspension of registration. Sub-Section (1) and Sub-Section (2) of Section 29 of the Central Act stipulates the different conditions when



the Proper Officer can exercise its power to cancel a registration. The present case falls within Sub-Section (2) of Section 29. The said Sub-Section (2) of Section 29 of the Central Act is reproduced herein under:

**“29.(2)** *The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where – (Refer to Rules 21, 21A & 22)*

*(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or*

*(b) a person paying tax under section 10 has not furnished [the return for a financial year beyond three months from the due date of furnishing the said return]; or*

*(c) any registered person, other than a person specified in clause (b), has not furnished returns for [such continuous tax period as may be prescribed]; or*

*(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or*

*(e) registration has been obtained by means of fraud, willful misstatement or suppression of facts:*

*Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.*

*[Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed]”*

31. It would be seen from the above quoted Sub-Section that a Proper



Officer may cancel the registration of a person from such date including any retrospective date as he may deem fit when any of the conditions stipulated in Sub-Clauses (a) to (e) are satisfied. However, to exercise the said power, the Proper Officer is required to give an opportunity of hearing to the person.

32. At this stage, it is further relevant to take note of that the Proper Officer in order to cancel the registration has to take note of the procedure as stipulated in Rule 22 which stipulates that the Proper Officer shall issue a notice to such person in FORM GST REG-17 requiring him to show cause within a period of seven working days from the date of service of such notice as to why his registration should not be cancelled. This Court duly takes note of the FORM GST REG-7 which is a statutory form. The proforma notice as it appears, stipulates that the Proper Officer has information which had come to his notice that the registration is liable to be cancelled for the reasons to be categorically specified. The Proper Officer thereupon has to give an opportunity to furnish a reply within the period of seven working days from the date of service of the notice and further fix a date for appearance before him.
33. It is further seen that the reply to the show cause notice has to be submitted in FORM GST REG-18. The order to be passed if the registration is to be cancelled is in FORM GST REG-19 within 30 days from the date of reply to the show cause notice and further the Proper Officer has to determine the tax, interest or penalty including the amount liable to be paid under Sub-Section (5) of Section 29 of the



Central Act in the said order to be passed in FORM GST REG-19.

34. It is further relevant to take note of Sub-Rule (4) of Rule 22, which stipulates that if the reply so submitted is found satisfactory, the Proper Officer shall drop the proceedings and pass an order in FORM GST REG-20. The proviso to Sub-Rule (4) of Rule 22 further stipulates that where the person, instead of replying to the notice served under Sub-Rule (1) for contravention of the provisions contained in Clause (b) or (c) of Sub-Section (2) of Section 29, furnishes all the pending returns and make full payment of tax dues along with applicable interest and late fee, the Proper Officer shall drop the proceeding and pass an order in FORM GST REG-20.
35. This Court further finds it relevant to take note of Sub-Section (3) of Section 29 which stipulates that the cancellation of the registration under Section 29 shall not affect the liability of the person to pay tax and other dues under the Act or to discharge any obligations under the Act or the Rules made thereunder for any period prior to the date of cancellation, whether or not such tax or other dues are determined before or after the date of cancellation.
36. Therefore, from a conjoint reading of Section 29 with Rule 22 and the FORMS GST REG-17, GST REG-18, GST REG-19 and GST REG-20 would show that the Proper Officer can cancel the registration under Sub-Section (2) of Section 29 only on the grounds stipulated in Sub-Clauses (a) to (e) of Section 29(2) and before doing so, an opportunity of hearing has to be given to the person. Sub-Section (3) of Section 29 further stipulates that till the date of cancellation of the registration,



the person in whose favour the registration was, has to pay tax and other dues under the Act or to discharge any obligations under the Act or the Rules made thereunder. It would also transpire from a reading of Rule 22 of the Central Rules that not only show cause notice is required to be issued in the format as stipulated in FORM GST REG-17 but also a date of hearing is required to be fixed. Therefore, it would be seen that the opportunity which is to be granted has to be an opportunity in real sense and not a mere formality. Further to that, it is a well settled principle of law that when a show cause notice is issued, the show cause notice has to specify clearly and without any ambiguity the reasons as to why the show cause notice have been issued in terms with FORM GST REG-17. It is trite that if the said show cause notice is vague, the very initiation of the proceedings on the basis of the said show cause notice would become redundant. More so, when a combine reading of the aforementioned provisions clearly stipulate that the person has to be given an opportunity to be heard and this opportunity of giving a hearing includes an issuance of a show cause notice and a personal hearing.

37. It would further show from a further reading of Section 29 read with Rule 22 of the Central Rules and the statutory form being FORM GST REG-19 as it stood at the time when the impugned orders of cancellation of the registration were passed that the order of cancellation has clearly reflect the reason as to why the registration is cancelled and further indicate to what amount of tax, interest and penalty, etc., the person is liable prior to the date of cancellation of the registration.



38. This Court further finds it relevant to take note of Section 30 of the Act of the Central Act which deals with revocation of the cancellation of the registration. Section 30 provides an avenue to the person whose registration has been cancelled to seek revocation of the cancellation of registration in the prescribed manner within 30 days from the date of service of the cancellation order. This was the position prior to 01.10.2023 but subsequently with effect from 01.10.2023, the person whose registration is cancelled may apply to such officer for revocation of the cancellation of registration in such manner, within such time and subject to such conditions and restrictions as may be prescribed. In the instant batch of writ petitions, there was no application filed for revocation in view of the mandate of Rule 23 as it stood post 01.10.2023 whereby it has been mandated that the period within which such an application can be filed cannot be filed beyond 270 days. Under such circumstances, the avenue of revocation of the cancellation of the registration certificate was not available to the petitioners in the batch of writ petitions as no steps were taken within the period of 270 days.
39. Be that as it may, this Court finds it very pertinent to take note of the second and third proviso to Rule 23(1) of the Central Rules. The said two provisos being relevant are reproduced herein under:

*“Provided further that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said*



*returns:*

*Provided also that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration:"*

40. The above quoted two provisos shows that a person can only file an application seeking revocation if that person has furnished the returns and paid any amount due as tax in terms of the returns, along with amount payable towards interest and penalty and late fee in respect to the said returns. In other words, the provision of revocation of cancellation of a registration is only available when the person concerned submits his returns and also pays the amount due as tax, interest, penalty and late fee in respect to the such returns. The third proviso to Rule 23(1) is also relevant inasmuch as it provides that all returns due for the period from the date of order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of 30 days from the date of order of revocation of the cancellation of registration. This third proviso to Rule 23(1) is relevant to be taken note of inasmuch as in the event this Court observes that this is the fit case for interference to the cancellation of the registration, this Court would be required to pass appropriate orders to the effect that for the period from the date of cancellation of the registration till the date of revocation of the cancellation of the registration, the petitioners herein would be liable to furnish all returns within a period of 30 days from



the date of revocation of the cancellation of the registration.

41. This Court further takes note of Section 107 of both the State Act and the Central Act which stipulates that any person aggrieved by any order passed under the State or the Central Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person. It is further seen from Sub-Section (4) of Section 107 that the Appellate Authority had been only empowered to condone the period by another one month and nothing more.
42. In this context, it is relevant to take note of that in the instant batch of petitions, two of the writ petitioners have preferred appeals and those appeals have been dismissed by the Appellate Authority as the delay in preferring the appeal is more than the period permitted under Section 107 to the Appellate Authority to condone the delay. It is the opinion of this Court that the orders by which the Appellate Authority had rejected the appeals in the case of two petitioners who have preferred the appeals do not call for interference as they had exercised the power in tune with Section 107 of the Central Act.
43. Be that as it may, the question arises in the instant proceedings as to whether the impugned orders of cancellation of the registration were bad in law and violated to the provisions of the Central Act or the State Act or the Rules framed therein under.
44. In the foregoing paragraphs of the instant judgment, this Court has



duly taken note of the show cause notices which were issued. The said show cause notices do not specifically state the reasons as to why the Proper Officer was of the opinion that the registration of the petitioner is required to be cancelled. There is no mention of the period when the returns have not been filed. It appears from a perusal of the show cause notices enclosed to the writ petitions except WP(C) No.2695/2024 that the Proper Officer mechanically issued the said show cause notice.

45. In the case of WP(C) No.2695/2024, the petitioner has specifically averred that the petitioner could not access to the show cause notice and the respondents have also not brought on record the said show cause notice. Under such circumstances, this Court is of the opinion that the show cause notices were vague. In that view of the matter, as the show cause notices were vague, the orders by which the registrations were cancelled cannot be sustained in law.
46. This Court has also perused the orders of cancellation impugned in the present proceedings. It is also relevant to take note of that admittedly the petitioners have not submitted any reply but most surprisingly the Proper Officer referred in the impugned orders of cancellation of the registration about replies being filed. In fact, the Proper Officer appears to have been confused whether any reply has been filed or not. It appears that the Proper Officer most mechanically passed the orders of cancellation even without caring to strike out the portion which was not required in the statutory form in FORM GST REG-19. In fact, it surprises this Court as to how mechanically the jurisdiction was



exercised by the Proper Officer. It is trite principle of law that when a jurisdiction is conferred upon the Authority with a specific mandate how the jurisdiction is to be exercised and if the authority fails to exercise his jurisdiction as per the stipulated mandate, it is to be deemed that the said Authority had not exercised the jurisdiction at all.

47. Further to that, there is also no reason assigned for cancellation of the registration in WP(C) No.2244/2024, WP(C) No.2695/2024 and WP(C) No.3683/2024. However, in WP(C) No.4500/2024, there is a reason assigned that returns were not filed. Be that as it may, taking into account the perfunctory and mechanical manner in which the Proper Officer has exercised his jurisdiction, this Court is of the opinion that the orders of cancellation of the registration challenged in the batch of writ petitions are required to be interfered with.
48. This Court cannot also be unmindful of the fact that the registrations were cancelled in the cases of the petitioners herein sometime in the years 2019 and 2021 and the petitioners have filed their returns for the period prior to cancellation only in the year 2024. There are allegations made by the respondents that the petitioners continued to run their business in the meantime. In addition to that, this Court also takes note of that these writ petitions were filed in the later part of 2024 i.e. after almost three years and in respect to WP(C) No.2244/2024 after five years.
49. This Court had in the previous segments of the instant judgment referred to the third proviso to Rule 23(1) of the Central Rules which categorically stipulates that upon revocation of the cancellation of



registration, the assessee is required to file his returns within 30 days for the period from the date of cancellation to the date of revocation of the cancellation. In view of this Court opining that the orders of cancellation of registration are required to be interfered with, the petitioners herein would now be required to file their annual returns for the various financial years till date. This Court has also taken note of the provisions of Section 73(10) of the Central Act/State Act which stipulates that the Proper Officer can issue the order under Section 73(9) of the Central Act/State Act within 3 years from the due date for furnishing the annual returns. It is also apposite to mention that in terms with Section 73(2) of the Central Act/State Act, the Proper Officer has to issue notice three months prior to the time limit specified in Section 73(10) of the Central Act/State Act. Therefore, it is the opinion of this Court that in order to balance the equities, it is required that the date of furnishing the annual return be appropriately extended. In that view of the matter, this Court declares that in respect to the Petitioners in the present batch of writ petitions, the period for submission of the annual returns would be the date of the instant judgment except for the period 2024-2025 which would be in terms with Section 44 of the Central Act/State Act.

50. In that view of the matter, the instant batch of writ petitions are disposed off with the following observations and directions:
- (i) The order of cancellation of registration dated 18.11.2019 challenged in WP(C) No.2244/2024 is set aside and quashed. The petitioner herein is directed to file the returns for the period from



the date of cancellation of the registration i.e. 18.11.2019 till date within 30 days from the date of the instant judgment. The period as stipulated in Section 73(10) of the Central Act/State Act shall be computed from the date of the instant judgment except for the financial year 2024-25 which shall be as per Section 44 of the Central Act/State Act. The Petitioner herein shall also be liable to make payment of the arrears i.e. tax, penalty, interest and late fees.

- (ii) The order of cancellation of registration dated 17.07.2021 challenged in WP(C) No.2695/2024 is set aside and quashed. The petitioner herein is directed to file the returns for the period from the date of cancellation of the registration i.e. 17.07.2021 till date within 30 days from the date of the instant judgment. The period as stipulated in Section 73(10) of the Central Act/State Act shall be computed from the date of the instant judgment except for the financial year 2024-25 which shall be as per Section 44 of the Central Act/State Act. The Petitioner herein shall also be liable to make payment of the arrears i.e. tax, penalty, interest and late fees.
- (iii) The order of cancellation of registration dated 23.03.2021 challenged in WP(C) No.3683/2024 is set aside and quashed. The petitioners herein are directed to file the returns for the period from the date of cancellation of the registration i.e. 23.03.2021 till date within 30 days from the date of the instant judgment. The period as stipulated in Section 73(10) of the Central



Act/State Act shall be computed from the date of the instant judgment except for the financial year 2024-25 which shall be as per Section 44 of the Central Act/State Act. The Petitioners herein shall also be liable to make payment of the arrears i.e. tax, penalty, interest and late fees.

- (iv) The order of cancellation of registration dated 10.02.2021 challenged in WP(C) No.4500/2024 is set aside and quashed. The petitioner herein is directed to file the returns for the period from the date of cancellation of the registration i.e. 10.02.2021 till date within 30 days from the date of the instant judgment. The period as stipulated in Section 73(10) of the Central Act/State Act shall be computed from the date of the instant judgment except for the financial year 2024-25 which shall be as per Section 44 of the Central Act/State Act. The Petitioner herein shall also be liable to make payment of the arrears i.e. tax, penalty, interest and late fees.

**JUDGE**

**Comparing Assistant**