

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 3442 of 2022**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE J.B.PARDIWALA**

and

**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>NO</b>
2	To be referred to the Reporter or not ?	<b>NO</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>NO</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>NO</b>

TAHURA ENTERPRISE  
Versus  
UNION OF INDIA

Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2

NOTICE SERVED BY DS for the Respondent(s) No. 1,2,3

MR PRIYANK LODHA for the Respondent

**CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA**

and

**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

**Date : 30/03/2022**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ-application under Article 226 of the Constitution of India, the writ-applicants have prayed for the following reliefs:-

(A) *be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ or order quashing and setting aside order dated 10.7.2019 (annexed at Annexure A) passed for cancelling the registration certificate of the Petitioner under the GST Acts;*

(B) *be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ or order quashing and setting aside order dated 14.9.2021 (annexed at Annexure F) passed by the appellate authority under the GST Acts;*

(C) *be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order directing the Respondents to forthwith restore the registration certificate of the Petitioners under the GST Acts;*

(D) *Pending notice, admission and final hearing of this petition, be pleased to stay the operation, execution and implementation of impugned order dated 10.7.2019 (annexed at Annexure A) and the Respondents may please be directed to restore the registration certificate of the Petitioner;*

(E) *Ex-parte ad interim relief in terms of prayer C may kindly be granted;*

(F) *Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioners shall forever pray.*

2. The facts giving rise to this litigation may be summarized as under:-

2.1 The writ-applicants are engaged in the business of trading an iron and steel scrap. The writ-applicants were duly registered under

the G.S.T. Acts.

2.2 It is the case of the writ-applicants that the 2<sup>nd</sup> writ-applicant i.e. the Proprietor of the 1<sup>st</sup> writ-applicant is uneducated and has only attended the school upto the 4<sup>th</sup> Standard. The writ-applicants are small scale traders in a village in Panchmahal district.

2.3 Due to personal as well as financial difficulties, the writ-applicants could not file the returns under the G.S.T. Acts for some months in the year 2019. The writ-applicants pointed out that the returns under the G.S.T. Act can be filed only after full payment of the tax dues as per such returns and the writ-applicants were not in a position to pay tax.

2.4 A show cause notice was issued to the writ-applicants on 24.5.2019 proposing to cancel the registration certificate under the G.S.T. Act on the ground that the writ-applicants had not filed the returns.

2.5 The writ-applicants submitted before the officer that the writ-applicants were facing financial difficulties and therefore, it was not possible for them to immediately file the returns.

2.6 The 3<sup>rd</sup> respondent authority, however, proceeded to pass the impugned order dated 10.7.2019 cancelling the registration certificate of the writ-applicants under the G.S.T. Act by stating in the order as follows: *“registration is cancelled for want of compliance”*. No other reasons were assigned in the order.

2.7 It is the case of the writ-applicants that they were not served with a physical copy of the order canceling the registration certificate. However, the consultant of the writ-applicants informed them that returns could be filed only upon payment of tax dues as per such returns.

2.8 The financial condition of the writ-applicants was not at all sound and they were not in a position to immediately pay the tax dues as per returns.

2.9 The writ-applicants, therefore, did not file restoration application or appeal under the G.S.T. Act under a bonafide belief that compliance by way of filing of returns would be possible only once they were able to manage to arrange money for paying up the tax as per the returns to file.

2.10 Thereafter, the Covid pandemic took a grip of the country disrupting all businesses and it also seriously affected the health of the 2<sup>nd</sup> writ-applicant for a brief period.

2.11 Ultimately, in July 2021 the writ-applicants could muster the finances for making payment of tax dues under the G.S.T. Act and therefore, they immediately filed a restoration application before the authority.

2.12 The writ-applicants made good their assurance in their application by filing all returns and paying due taxes under the

G.S.T. Act on 06.09.2021. On such basis, the request was made for restoration of the registration certificate.

2.13 The application for restoration filed by the writ-applicants was considered as an appeal under the G.S.T. Act. The 2<sup>nd</sup> respondent authority has dismissed the request for restoration of the registration certificate by impugned order dated 14.09.2021 on the ground that the same is time-barred by limitation.

3. In such circumstances referred to above, the writ-applicants are here before this Court with the present writ-application.

4. We have heard Mr. Uchit Sheth, the learned counsel appearing for the writ-applicants and Mr. Priyank Lodha, the learned senior standing counsel appearing for the respondents.

***SUBMISSIONS ON BEHALF OF THE WRIT-APPLICANT:-***

5. Mr. Uchit Sheth, the learned counsel appearing for the writ-applicants have made the following submissions.

5.1 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 under Clause (b) or (c) of Sub-section (2) of Section 29, 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.

5.2 In the case of the writ-applicants, 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.

5.3 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.

5.4 The writ-applicants had filed application requesting for restoration of the registration 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.

5.5 The only reason for cancellation of registration certificate of the writ-applicants was non-filing of returns due to non-payment of

tax. Such non-payment of tax was due to financial constraints beyond the control of the writ-applicants. Now that the writ-applicants have already made good the outstanding amount of tax, the cancellation of registration should be revoked and the writ-applicants must be permitted to resume business.

***SUBMISSIONS ON BEHALF OF THE RESPONDENTS:-***

6. On the other hand, Mr. Priyank Lodha, the learned Senior Standing Counsel relied upon the affidavit-in-reply filed by the respondents before this Court. It was further urged that in so far as the order of Hon'ble Supreme Court of India extending period of limitation was concerned, the same would not be applicable in the present case concerning application for restoration of registration.

***ANALYSIS:-***

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is that whether the writ-applicants are entitled to seek any relief as prayed for.

8. Indisputably, the cancellation of registration was on the ground of non-filing of returns by the writ-applicants. The impugned order cancelling the registration came to be passed on 10.07.2019. The writ-applicants preferred an application before the appellate authority for revocation of cancellation of registration, but such application was not entertained on the ground that the same was time barred.

9. We take notice of the fact that the Central Board of Indirect Taxes and Customs 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. As the application filed by the writ-applicants 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 and in such circumstances, the limitation in accordance with the order passed by the Central Board of Indirect Taxes and Customs could be said to have been extended.

10. Indisputably, 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-applicants 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.

11. In view of the aforesaid, the impugned order dated 10.07.2019 cancelling the registration certificate is hereby quashed and set aside. The respondents are directed to forthwith restore the registration certificate of the writ-applicants under the provisions of



the G.S.T. Act.

12. With the aforesaid, the writ-application stands disposed of.

**(J. B. PARDIWALA, J)**

**(NISHA M. THAKORE, J)**

A. B. VAGHELA

