2025:DHC:737-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 16 December 2024**
Judgment pronounced on : 07 February 2025

\+ **W.P.(C) 14279/2024 and CM APPL. 59773/2024 (Interim Relief)**

M/S ADDICHEM SPECIALLITY LLP .....Petitioner
Through: Mr. Rupak Srivastava and Mr. Deepak Kapoor, Advs.

versus

SPECIAL COMMISSIONER I, DEPARTMENT OF TRADE AND TAXES AND ANR .....Respondents
Through: Mr. Udit Malik, ASC for GNCTD with Mr. Vishal Chanda and Ms. Rima Rao, Advs.

\+ **W.P.(C) 15045/2024**

JM FLEET MANAGEMENT PVT LTD .....Petitioner
Through: Mr. Vibhas Kumar Jha, Mr. Rajat Pandey and Ms. Manju Pandey, Advs.

versus

THE COMMISSIONER OF SGST DELHI, DEPARTMENT OF TRADE AND TAXES & ORS. .....Respondents
Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel, Mr. Mayank Kamra and Mr. Ankit Kumar, Advs, for R-1 to 3.

\+ **W.P.(C) 16861/2024**

ENIA ARCHITECHTS .....Petitioner
Through: Mr. Vijay Gupta, Mr. Rahul Gupta and Mr. Ajesh Kugan M, Advs.

versus

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COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX AND ORS .....Respondents

Through: Mr. Aakarsh Srivastava, SC and Mr. Anand Pandey, Adv.

\+ **W.P.(C) 5650/2024**

ADITYA MADAAN .....Petitioner

Through: Mr. A.K. Babbar and Mr. B.K. Tripathi, Advs.

versus

COMMISSIONER CGST GST COMMISSIONERATE DELHI & ORS. .....Respondents

Through: Mr. Aakarsh Srivastava, SC and Mr. Anand Pandey, Adv.

\+ **W.P.(C) 13592/2024 and CM APPL. 56857/2024 (Stay)**

JP POLYMERS .....Petitioner

Through: Mr. Anuj Saini and Mr. M. Subhramaniyam, Advs.

versus

COMMISSIONER OF GST, DEPARTMENT OF TRADE AND TAXES AND ANR. .....Respondents

Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel, Mr. Mayank Kamra and Mr. Ankit Kumar, Advs. For R-1 and 2.

\+ **W.P.(C) 15725/2024**

MS GANGA BOX FACTORY THROUGH ITS PROPRIETOR ANAND RATHORE .....Petitioner

Through: Mr. Karan Singh, Mr. Rohit Aggarwal, Mr. Paras Sharma, Mr. Harinder, Advs.

versus

UNION OF INDIA THROUGH SECRETARY REVENUE CENTRAL BOARD OF INDIRECT TAXES & ANR. .....Respondents

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Through: Mr. Raghuvendra Shukla, SPC with Mr. Anil Devlal, Advs. For UOI.
Mr. Anurag Ojha, SSC with Mr. Dipak Raj, Mr. Subham Kumar and Mr. Kuldeep Mishra, Advs.
Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel, Mr. Mayank Kamra and Mr. Ankit Kumar, Advs.

\+ **W.P.(C) 13679/2024**

M/S DELHI ENTERPRISES .....Petitioner

Through: Mr. Vibhas Kumar Jha, Mr. Rajat Pandey & Ms. Manju Pandey, Advs.

versus

THE COMMISSIONER OF SGST DELHI & ORS. .....Respondents

Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel, Mr. Mayank Kamra and Mr. Ankit Kumar, Advs. for R-1 to 3.
Mr. Rajat Pandey, Mr. Vibhas Kumar Jha and Ms. Manju Pandey, Advs.

\+ **W.P.(C) 13757/2024**

LOOMAGE INDIA THROUGH ITS PROPIETOR .....Petitioner

Through: Mr. Abhay Chitravanshi, Ms. Aakriti Singh, Ms. Taniya Malhotra and Ms. Grisha Sharma, Advs.

versus

GOVT OF NCT DELHI & ANR. .....Respondents

Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel, Mr.

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Mayank Kamra and Mr. Ankit Kumar, Advs. For R-1 and 2.

\+ **W.P.(C) 13760/2024**

BHARAT AGRO INDUSTRIES .....Petitioner

Through: Mr. Khursheed Ahmad, M. Kamil, Mr. Sameed Salim and Mr. Pawan Kumar Sharma, Advs.

versus

COMMISSIONER OF CGST, DELHI AND OTHERS .....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Ankit Kumar, Adv.
Mr. Shashank Sharma, Adv.

\+ **W.P.(C) 16038/2024**

M/S PC QUALITY FURNITURE .....Petitioner

Through: Mr. Sermon Rawat and Mr. Harshit Jain, Advs.

versus

THE COMMISSIONER OF SGST DELHI & ORS. ……Respondents

Through: Ms. Mehak Nakra, ASC with Ms. Gunjan Suyal and Mr. Aditya Goyal, Advs.

\+ **W.P.(C) 16067/2024**

M/S JAI AMBY FURNITURE .....Petitioner

Through: Mr. Sermon Rawat and Mr. Harshit Jain, Advs.

versus

THE COMMISSIONER OF SGST DELHI & ORS. ……Respondents

Through: Ms. Mehak Nakra, ASC with Ms. Gunjan Suyal and Mr. Aditya Goyal, Advs.

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\+ **W.P.(C) 16936/2024**

M/S VASS IMPEX .....Petitioner

Through: Mr. Vibhas Kumar Jha, Mr. Rajat Pandey, Mr. Manju Pandey and Mr. Deepak Jha, Advs.

versus

THE JOINT COMMISIONER CGST APPEALS-II DELHI AND ANR. .....Respondents

Through: Mr. Aakarsh Srivastava, SC with Mr. Anand Pandey, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. These batch of petitions emanate from the orders handed down by the Appellate Authority, wherein the Appellate Authority has negated the stand of the petitioners thereby dismissing their appeals on the ground of limitation as per Section 107 of the Central and Goods Services Tax Act, 2017[1]. The petitioners also seek the quashing of the Show Cause Notices[2] issued to them by the respondents and the restoration of their respective GST[3] registrations.

2. The main two issues of the petitioners herein are: -

> i) Whether the Appellate Authority under Section 107(4) of the CGST Act is authorized to condone the delay in filing an appeal beyond one month after the expiration of the three-month period specified in Subsection (1) of Section 107 for filing an

[1]CGST Act.
[2]SCN
[3]Goods and Services Tax

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appeal against a decision or order issued by an adjudicating authority under the CGST Act? and

ii) Whether the appellate authority is empowered to condone a delay beyond the thirty-day period prescribed under Subsection (4) of Section 107 of the Act of 2017 or not, this Court, in exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, may direct the condonation of such delay. This can be done if the Court is satisfied that an exceptional case has been made out for such condonation or if the interest of justice demands it.

3. The petitioners in the aforementioned petitions are registered proprietors/dealers under the CGST Act, each holding different registration numbers. They were assessed by the respective adjudicating authorities which resulted in certain demands being raised against them and in some instances, their GST registrations being cancelled. Aggrieved by the cancellation of their GST registrations and the demands imposed, the petitioners filed statutory appeals before the Appellate Authority under Section 107 of the CGST. However, those appeals were not entertained and were dismissed due to delay in filing.

4. As the Central Government is yet to institute an Appellate Tribunal, the petitioners, aggrieved by the rejection of their appeals, have approached this Court by invoking its writ jurisdiction. For the sake of convenience and for proper adjudication, each of the writ petitions will be discussed individually.

W.P. (C) 14279/2024

5. In the present writ petition, a SCN, bearing reference No. ZA070322183368F, was issued by respondent No. 2 on 31.03.2022, proposing the cancellation of the petitioner firm's GST registration on

the ground of "*non-commencement of business within six months from the date of registration*," in the case of voluntary registration. The petitioner firm submitted a reply to the notice on 03.10.2022, providing explanations for the alleged discrepancies and furnishing the necessary documentation to demonstrate compliance with the GST provisions. Despite this, respondent No. 2 proceeded to cancel the petitioner firm's GST registration on 27.10.2022, with effect from the original date of registration, i.e., 07.06.2018.

6. Feeling aggrieved by the order cancelling the GST registration, the petitioner filed an appeal before the Appellate Authority under Section 107 of the CGST Act on 12.02.2024. However, by order dated 29.07.2024, the appeal was dismissed *in limine*, on the ground that the impugned order was of 27.10.2022 and the appeal was filed on 12.02.2024, which is beyond the prescribed time limit set forth in the provisions of sub-sections (1)[4] and (4)[5] of Section 107 of the CGST Act.

7. The petitioner contends that the delay in filing the appeal was due to the fact that they had submitted their reply to the SCN, which was duly received by respondent No. 2 on 03.10.2022. Despite this, the cancellation order issued by respondent No. 2 erroneously stated, "*whereas no reply to notice to show cause has been submitted."* The

[4] Section 107. Appeals to Appellate Authority
(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax 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.

[5] (4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

petitioner asserts that they made several visits to the respondent to rectify this clerical mistake, which caused the delay in filing the appeal.

W.P.(C) 15045/2024

8. In the present writ petition, the petitioner firm registered its business under the CGST Act on 23.04.2019, with GST registration No. 07AAECJ4719NIZ6. The petitioner firm asserts that due to the demise of a family member of their Chartered Accountant from COVID-19 and the nationwide lockdown, they were unable to file GST returns from February 2022 to June 2022.

9. On 26.07.2022, respondent No. 3[6] issued a SCN bearing reference No. ZA070221010429 to the petitioner firm for failure to pay tax, interest and penalty owed to the GST department. The petitioner firm approached respondent No. 3 seeking restoration of the GST registration. However, respondent No. 3 did not address the petitioner firm's request nor did they provide an opportunity for the petitioner to submit a reply or request a personal hearing in response to the SCN dated 26.07.2022. Subsequently, on 23.03.2023, respondent No. 3 issued an online order cancelling the petitioner firm's GST registration, effective retrospectively from 24.04.2019. The petitioner firm further argues that the Ward Office took eight months to issue the cancellation order.

10. On 25.01.2024, following consultation with their legal team and Chartered Accountant, the petitioner filed an appeal before the Appellate Authority. However, the appeal was dismissed *in limine* by

the Appellate Authority on the ground that the impugned order was of 23.03.2023 and the appeal was filed on 25.01.2024, which is beyond the prescribed time limit set forth in the provisions of subsections (1) and (4) of Section 107 of the CGST Act.

11. The petitioner relies on a decision of the Division Bench of this Court in **M/s Elasto Rubber Pvt. Ltd v. The Commissioner of SGST Delhi**[7], wherein this Court quashed the cancellation of GST registration. The petitioner states that they have undertaken to settle any tax liabilities accrued or due for the business year 2020 to the present or any charges payable to the respondents.

12. The petitioner further submits that if the respondents retroactively cancel the GST registration effective 23.04.2019, it would invalidate the GST invoices issued during that period and affect the transactions made under that GST number. Consequently, GST officers have been issuing demand notices to purchasers who received GST tax invoices from the petitioner for transactions between 2019 and 2020. The petitioner argues that this is unlawful and unsustainable in law, asserting that the respondents cannot retroactively cancel the firm's registration from 23.04.2019.

W.P.(C) 16861/2024

13. In the present writ petition, the petitioner firm had migrated to the CGST Act, holding GSTIN No. 07AAEFE9144R1ZS. The petitioner states that respondent No. 2[8] issued a SCN bearing reference No. ZA071120010986U for the cancellation of its GST

[6] Sales Tax Officer Class II, Ward 87, AVATO, Zone -8, Delhi-SGST.
[7] W.P.(C) 9516/2024

registration on 05.11.2020. The SCN specified that the petitioner firm could submit a reply within eight working days from the date of the notice. Additionally, the petitioner firm was instructed to appear for a personal hearing on the same day, 05.11.2020, at 4:42 PM, failing which the case would be decided *ex parte* based on the available records and on merits. The SCN was accompanied by an internal communication letter from the Deputy Commissioner, Anti Evasion, Central Tax, to the Assistant Commissioner, Division Rajouri Garden, CGST Delhi – West. The letter indicated that the Anti Evasion branch had conducted a physical verification of the petitioner firm's registered premises pursuant to a directive dated 14.10.2020, and found the petitioner to be non-existent at the specified location.

14. The impugned letter neither specified the date of physical verification nor include evidence proving the petitioner's non-existence at the principal place of business, only mentioning a telephonic conversation with a former employee. The Assistant Commissioner was requested to initiate *suo motu* cancellation proceedings under the CGST Act. No inspection notice or verification report with photographs was uploaded in Form GST REG-30, as per Rule 25 of the GST Rules, 2017, before 04.08.2023. On 5.11.2020, the petitioner firm's manager informed respondent No. 2 that the firm had vacated its premises due to COVID-19 and was seeking a new location to resume operations.

15. The petitioner firm submitted a reply to the SCN on 16.11.2020, explaining that the business premises were vacated due to the sudden

[8] The Superintendent, Ward 62, Zone 05, Range – 121, 4th Floor, Bhikaji Cama Palace, Delhi.

COVID-19 outbreak with the partners working from home. The petitioner firm also mentioned an ongoing investigation by the Assistant Commissioner, GST Audit-II, Delhi, regarding the migration of service tax input of Rs. 21,51,962/- through TRANS-1 Form. The detailed reply aimed to substantiate that the petitioner firm was not a non-existent or bogus dealer but had temporarily vacated the premises due to the pandemic.

16. Respondent No. 2 uploaded the GST registration cancellation order on 26.11.2020. The petitioner contends that their reply was not considered as the cancellation stated "*no response has been submitted, and the registration is canceled per DC (AE)'s direction*." The petitioner firm further explains that due to the COVID-19 outbreak, the firm's accountant relocated to his hometown with the GST portal login credentials leaving the partners unaware of the cancellation order. On 17.12.2020, the partner submitted another reply with the firm's new address, but they remained unaware of the cancellation order dated 26.11.2020.

17. The petitioner firm places reliance on the judgement of the Apex Court in **Commissioner of Central Excise, Bangalore v. Brindavan Beverages**[9], wherein it was held *that the SCN serves as the foundation upon which the department must construct its case. If the allegations outlined in the show cause notice are vague, lack specificity, are devoid of necessary details, or are unintelligible, it can be conclusively held that the petitioner was not afforded a proper opportunity to address the allegations contained therein. The purpose*

of a SCN is to provide the noticee with a fair opportunity to respond to the allegations made against them. In the absence of specific particulars, the SCN fails to fulfill its intended purpose and becomes ineffectual. It is a well-settled principle of law that any person against whom an adverse order is proposed must be adequately informed of the reasons underpinning such a proposal.

18. The petitioner firm discovered that their GST registration had been cancelled effective 26.11.2020, *vide* cancelation order dated 26.11.2020. The petitioner firm promptly filed an appeal before the Appellate Authority on 21.12.2023. However, on 19.04.2024, the appeal was dismissed solely on the ground of limitation. The petitioner argues that the Appellate Authority overlooked the vagueness of the show cause notice, the disregard of the petitioner's reply and that the cancellation order was issued hastily and under the influence of another officer.

19. The petitioner firm submits that it seeks an opportunity to revive its GST registration to regularize the defaults. Reliance is placed on the judgment of the Madras High Court in **Tvl. Suguna Cutpiece Center v. The Appellate Deputy Commissioner**[10], where it was held that cancellation of GST registration serves no useful purpose and contravenes the objectives of the GST regime. The Court observed that excluding taxpayers from the GST framework leads to revenue leakage and undermines the purpose of ensuring proper tax collection on goods and services. Denying the revival of registration

[9] 2007 SCC OnLine SC 842
[10] 2022 SCC OnLine Mad 8903

effectively isolates entrepreneurs and hinders revenue generation. Therefore, the impugned Show Cause Notice and cancellation order merit being set aside, and the Petitioner's GST registration should be restored.

W.P.(C) 5650/2024

20. In this instant writ petition, the petitioner got his company registered on 17.07.2017, bearing GSTIN No. 07DFFPM214D1ZR. The petitioner filed an application for the cancellation of his registration on 09.03.2022. The respondent No. 2[11] issued a SCN under Section 29(2) of the CGST Act read with Rules 22(1) on 03.02.2023, for cancelation of registration of the petitioner's GST certificate.

21. The petitioner asserts that the SCN bears a stamp reading "Signature Not Verified," digitally signed by DS Goods and Services Tax Network 07, who is not the authorized Proper Officer for the petitioner, rendering the notice legally invalid. Additionally, the SCN dated 03.02.2023 does not indicate that the registration would be cancelled retrospectively, yet the Registration Certificate was cancelled retrospectively based on this notice. The petitioner further states that the order dated 18.04.2023, cancelling the registration retrospectively to 02.07.2017, also bears the "Signature Not Verified" stamp and is digitally signed by an unauthorized officer, making it unsigned and invalid in law.

[11] Superintendent, Ward 61, Range – 128, Janakpuri, Delhi.

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22. The petitioner submits that the SCN dated 03.02.2023, reflected the reason for cancellation of the Registration Certificate, which reads as follows: -

> *"Failures to furnish returns for a continuous period of six months" in facts and circumstances is not an erroneous reason when six months period has not exhausted."*

23. The petitioner submits that this reason does not suffice as he had applied for the cancellation of the Registration Certificate on 09.03.2022.

24. It is further stated that the order dated 18.04.2023 directed the petitioner to pay "ZERO" (0) amount, contradicting the SCN dated 03.02.2023, which alleged failure to pay tax, interest, or penalty beyond six months from the due date. The cancellation order dated 18.04.2023, based on the SCN dated 03.02.2023, is illegal, arbitrary, and invalid, as the cited reason is incorrect. The SCN was issued before the six-month period had expired, and the petitioner had already applied for cancellation, which was still pending. Therefore, the order violates Section 29(2) of the CGST Act, rendering it legally flawed.

25. Aggrieved by the cancellation of the Registration Certificate, the petitioner filed an appeal before the Appellate Authority on 18.10.2023, which was rejected on 09.01.2024 for being time-barred.

26. The petitioner contends that the Registration Certificate[12] was suspended on the same day the Show SCN dated 03.02.2023 was issued, and no order revoking the suspension was passed within a

[12] RC

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reasonable time. Instead, the impugned cancellation order was arbitrarily issued after a prolonged period on 18.04.2023. The cancellation, citing non-filing of returns for a continuous period of six months, lacks statutory backing as it does not fall within the causes outlined in Section 29(2) of the CGST Act. Furthermore, the retrospective cancellation of the RC, without prior notice or explicit mention in the SCN, is unlawful and exceeds the authority conferred by law. Reliance is placed on the judgment of this Court in **Aditya Polymers vs. Commissioner, DGST**[13], which underscores the illegality of retrospective cancellation without due process. Accordingly, the impugned order should be quashed as it violates principles of natural justice and statutory provisions.

W.P.(C) 13592/2024

27. The petitioner firm, registered under the CGST Act with GSTIN 07ADGPJ9077M1ZW, states that it received various items from registered suppliers, including M/s Ridhi Sidhi Polymers, M/s Pansari Steel Pvt. Ltd., and M/s SSS Profound Solution Private Limited, with payments made through bank transfers. The petitioner firm filed its annual return in GSTR-09 and availed Input Tax Credit on items received from these suppliers. It is however stated that since 2020, the proprietor of the petitioner firm has suffered from lower spine pain and significant business losses due to non-receipt of dues from various business parties.

[13] W.P.(C) 14493/2022

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28. In 2022, finding it difficult to continue the business, the proprietor of the petitioner firm decided to close it and requested the respondents to permit the discontinuation. The petitioner firm's application for business closure was registered with the respondent on 25.05.2022, and on 20.06.2022, the respondent approved the closure. The petitioner firm states that, more than five years after filing the annual return for FY 2017-18, respondent No. 2 issued a SCN bearing reference No. ZD070923023779X dated 22.09.2023, alleging an outstanding demand of Rs. 4,55,93,670/- (including interest upon the amount due and penalty) related to the annual return for FY 2017-18.

29. The petitioner firm responded to the SCN, explaining that the excess tax computed for FY 2017-18 had already been reversed in FY 2018-19. The petitioner firm also informed the Proper Officer that M/s Ridhi Sidhi Polymers remained active until 2022 and filed its tax returns up to February 2022. However, respondent No. 2, the Proper Officer, disregarded the petitioner firm's reply and, in the order dated 12.12.2023, concluded that the petitioner firm had not correctly availed input tax credit on inward supplies due to discrepancies in the reconciliation of turnover in GSTR-9, resulting in a tax demand of Rs. 3,88,352/- (CGST: Rs. 1,94,176/- and SGST: Rs 1,94,176/-) for FY 2017-18.

30. The petitioner firm on being aggrieved by the order dated 12.12.2023 passed by the Proper Officer, preferred to file an appeal before the Adjudicating Authority. However, the appeal could only be filed on 12.06.2024 before the Appellate Authority, due to the closure of the business, and it took time to gather the necessary documents,

resulting in a 91-day delay in filing of the appeal. Inadvertently, no separate application for condonation of delay was submitted. The Appellate Authority listed the appeal, raising objections about the delay, and dismissed it on the grounds of limitation without addressing the merits, through an order dated 04.07.2024.

31. The petitioner states that the Appellate Authority dismissed the appeal without considering the petitioner's submissions on the delay and without addressing the merits. The petitioner further submits that the excess tax computed by the respondents for FY 2017-18 had already been reversed in the subsequent financial year, FY 2018-19.

W.P.(C) 15725/2024

32. In the present matter, the petitioner, registered under the CGST Act on 01.07.2017 with GSTIN No. 07ADRPR6107R1ZM, submits that on 03.03.2021, the respondents issued a SCN for Cancellation of Registration in Form GST REG-17. The SCN alleged that the petitioner collected tax but failed to pay it to the Central/State Government within three months of the due date. It also stated that the petitioner's registration stood suspended from 01.07.2017. On 12.03.2021, the Proper Officer passed an order cancelling the petitioner's GST registration retrospectively from the registration date, 01.07.2017.

33. Aggrieved by the cancellation order dated 12.03.2021, the petitioner filed an appeal before the Appellate Authority on 19.12.2023. The appeal was dismissed on 27.03.2024 due to the delay in filing. The impugned order stated that the cancellation order was issued on 12.03.2021, and the appeal was filed beyond the prescribed

time limit as per subsections (1) and (4) of Section 107 of the CGST Act.

34. The petitioner submits that the cancellation order dated 12.03.2021 by the Proper Officer and the appellate order dated 27.03.2024 are erroneous, arbitrary, and unlawful, both legally and morally, and should be set aside on the following grounds: -

> a) The petitioner argues that the retrospective cancellation of GST registration is untenable in this case. The petitioner had voluntarily applied for cancellation due to financial difficulties and discontinuance of business, which implies the winding up and closure of business premises. Therefore, retrospective cancellation is unjustified.
> b) The cancellation order dated 12.03.2021, passed by the Proper Officer, should be set aside due to violations of Rules 20, 21A, and 23(3) of the CGST Rules, 2017. According to Rule 20, the petitioner filed an application for cancellation of registration within 30 days of the event warranting cancellation, due to financial hardship. Additionally, Rule 21A states that upon filing the application, the registration is deemed suspended from the date of submission. However, in this case, the Proper Officer incorrectly suspended the GST registration from the date of the Show Cause Notice, i.e., 03.03.2021, which is legally flawed. As per Rule 22(3) of the CGST Rules, 2017, the Proper Officer must issue an order within 30 days of the application for cancellation. The petitioner applied on 05.10.2020 and 15.12.2020, but the order was issued on 12.03.2021, exceeding the prescribed period, making it non-compliant with Rule 22(3).

W.P. (C) 13679/2024

35. In the present writ petition, the petitioner firm registered its business on 13.03.2020, bearing GSTIN No. 07LLDPS5372LIZA. The petitioner firm asserts that it has regularly filed GST returns for the financial years 2020-2021, 2021-2022, 2022-2023, and 2023-2024. However, due to confusion regarding the firm's address, the concerned GST inspector could not locate the premises. The petitioner

firm explains that the business premises are situated in Village Nangli Poona, Delhi, an unauthorized area referred to as Laldora land by the Land Revenue Department. This area lacks clearly defined addresses, as property owners often create their own addresses for renting out spaces for commercial purposes such as godowns and shops. The land is subdivided from a large Khasra No. 35 into smaller plots, each approximately 100 square yards, with addresses assigned by the landowners by adding numbers like 1, 2, 3, etc., to the Khasra number. Consequently, when the sales tax inspector visited the petitioner firm's address, he was unable to locate the premises and reported to his superiors that the petitioner's firm was not in existence at the time of inspection.

36. Respondent No. 3 issued an online SCN to the petitioner firm on 11.09.2023, stating that the "*firm could not be traced. Address appears to be incomplete*." The petitioner contends that respondent No. 3 was aware of the firm's existence but was unable to trace the address due to the fact that the area lacks a proper address system. The address was self-assigned by the property owners for commercial purposes, rather than being recorded in the official land. The respondent No. 3 issued an online cancellation of the petitioner's GST registration on 03.10.2023, with retrospective effect from 13.02.2020, the date of the petitioner's firm's registration.

37. The petitioner asserts that upon learning of the cancellation of the GST registration, which was based on the incomplete address of the firm, it promptly filed an online appeal before the Appellate

Authority on 04.02.2024. However, the Appellate Authority dismissed the petitioner's appeal on the grounds of delay on 03.09.2024.

W.P.(C) 13757/2024

38. In the present matter, the petitioner, operating a proprietorship firm under the name Loomage India, is engaged in the manufacturing and supply of floor coverings, rugs, carpets, mats, home furnishing textiles, handicrafts, and similar products. The petitioner is a registered trader under the CGST Act since 01.07.2017, bearing GSTIN No. 07ACCPC7326DIZ4. The petitioner submits that, being a layman with limited knowledge of GST return filing, he relies on consultants for advice. It is averred that the petitioner, while filing his GST returns, sought consultation from his advisor but was inadequately guided. The petitioner further submits that on 22.01.2022, he applied for a refund of input tax credit with the respondent for the period from 01.04.2020 to 30.11.2021, a time span affected by the COVID-19 pandemic, during which he was unable to consult with anyone adequately.

39. The petitioner submits that after filing the return, Respondent No. 2 issued a SCN dated 04.04.2022, requiring the petitioner to "*show cause as to why the refund claim, to the extent of the specified amount, should not be rejected, or the amount erroneously refunded should not be recovered for the reasons stated therein*." In response, the petitioner filed a reply on 09.04.2022, attaching all necessary documents as advised by his consultant. It is claimed that the petitioner did not receive any subsequent communication regarding

the acceptance or rejection of the refund application and it was only after a significant period that the petitioner, upon inquiring with his consultant, was informed—after checking the GST portal—of the rejection of the refund claim.

40. The petitioner's application for input tax credit was rejected by Respondent No. 2 through an order dated 29.04.2022, on the ground that the petitioner had not uploaded GSTR-2A. The petitioner asserts that he was not informed by his consultant about the specific documents required for submission with the return filing. Due to his limited knowledge as a layman and the technical complexities of the portal, he was unable to upload the GSTR-2A, and this was not due to any other reason. The petitioner contends that he is capable of demonstrating his entitlement to an input tax credit amounting to Rs. 6,59,829/-, which is a substantial sum.

41. Aggrieved by the order dated 29.04.2022, wherein the respondent wrongfully rejected the petitioner's refund application, the petitioner filed an appeal under Section 107 of the CGST Act, 2017, on 23.01.2023. It is stated that the petitioner did not initially inquire about the status of the refund application, as he reasonably relied on communication from the respondents or any official updates. It was only after specifically consulting with his advisor that the petitioner became aware of the rejection order, nearly four months after its issuance. Consequently, there was a significant delay in filing the appeal. Furthermore, the petitioner did not engage any legal consultant after the rejection of the refund application, resulting in a delay of 182 days in filing the appeal.

42. The Appellate Authority, by orders dated 05.02.2024 and 14.02.2024, rejected the appeal *in limine* on the ground that it was time-barred, as the petitioner had filed the appeal beyond the three-month period permitted under Section 107 of the CGST Act, 2017. The petitioner contends that the Appellate Authority, without proper consideration and by adopting a pedantic interpretation of Section 107, rejected the appeal without appreciating that the refund application was meritorious and that the petitioner was entitled to a full refund of Rs. 6,59,829/-.

W.P.(C) 13760/2024

43. The petitioner, in the present writ petition, is a dealer registered under the CGST Act, bearing GSTIN 07AJDPI6563N1ZS, with validity from 07.12.2019. The petitioner was conducting business at the old principal place of business located at "89, Ground Floor, Pkt-N, Sector-5, DSIDC City, Landmark Near CNG Pump, Bawana, North, Delhi, Delhi, 110039" until 19.12.2022. Subsequently, the petitioner shifted the business premises to a new address on 20.12.2022, as per the rent agreement e-stamp certificate number IN-DL34164385356664U, and requested an online amendment on 13.06.2023 via ARN AA0706230379524. Consequently, the petitioner was found non-existent at the old business premises.

44. Respondent No. 3 issued a SCN to the petitioner on 22.06.2023, citing the reason as "*Section 29(2)(e) - registration obtained by means of fraud, wilfull misstatement, or suppression of facts*." Subsequently, on 06.07.2023, Respondent No. 3 passed an order for the cancellation of the Registration Certificate with a "0" demand. However, the

revenue, acting illegally and arbitrarily, canceled the petitioner's GST registration with retrospective effect from 20.12.2019.

45. Aggrieved by the original order dated 06.07.2023 (P-3), the petitioner filed an appeal under Section 107 of the CGST Act before the Appellate Authority on 21.03.2024, accompanied by an application for condonation of delay in filing the appeal beyond the prescribed three-month period. The appeal was filed following the rejection of the application for condonation of delay in the revocation of the cancellation of registration. After hearing the petitioner, the Appellate Authority dismissed the appeal on 24.07.2024.

W.P.(C) 16038/2024 and W.P.(C) 16067/2024

46. The petitioner, in the present writ petition, registered its business under the CGST Act, bearing GSTIN 07AYDPS2199H1Z1. The petitioner asserts that from 2017 to 2021, it conducted business in Delhi and regularly filed GST returns during this period. For compliance under the CGST Act, the petitioner engaged a GST consultant to prepare returns and provide advice on the required compliances. However, during this period, the petitioner faced significant operational challenges and financial stress due to the COVID-19 crisis and successive lockdowns, which resulted in high operational costs and minimal sales.

47. It is asserted that in light of these circumstances, the petitioner decided to relocate its business operations to Baghpat, Uttar Pradesh. However, the process of identifying a suitable location and completing the transition took several months. Ultimately, the petitioner successfully shifted its operations to Baghpat, U.P.

48. Respondent No. 3 issued a SCN on 23.10.2021 stating "Non-compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed." However, the petitioner asserts that it was unaware of this SCN, as it was not informed by its GST consultant, and consequently, the petitioner was unable to participate in the proceedings. Subsequently, on 18.12.2021, the respondents passed an order cancelling the petitioner's GST registration retrospectively with effect from 01.07.2017. In or around November 2023, the petitioner learned from another GST consultant that it should have initiated the revocation of its GSTIN for Delhi. Upon instructing the GST consultant to undertake the necessary compliance measures, the petitioner was informed that revocation of the Delhi GST registration was not possible, as the GST number had been cancelled retrospectively from 01.07.2017.

49. Aggrieved by the order of cancelation dated 18.12.2021, the petitioner filed an appeal before the Appellate Authority on 09.11.2023, wherein the appeal was dismissed on 31.05.2024 on the ground of limitation.

W.P.(C) 16936/2024

50. The petitioner in the present writ, a trading firm registered under the CGST Act with GST No. 07AFBPJ6962Q1ZT, was engaged in the business of trading goods, including iron, steel, and scrap items, to various clients. The petitioner had duly filed GST returns for the period from 2017 to August 2021. However, during the COVID-19 pandemic, the petitioner's business suffered significant losses due to the economic downturn.

51. Additionally, it is claimed that several family members of the petitioner became critically ill and passed away during this period, leaving the petitioner emotionally distressed. As a result, the petitioner inadvertently failed to respond to the SCN dated 09.08.2021 and did not take cognizance of the subsequent cancellation of the GST registration through an order dated 19.08.2021.

52. Upon learning in September 2021 that the GST registration had been cancelled by the Superintendent, the petitioner directed his accountant to visit the GST office to initiate the restoration process. However, the Superintendent informed them that the time to file a reply had lapsed and advised them to file an appeal before the appellate authority for the restoration of the GST registration.

53. The petitioner submits that aggrieved by the cancellation of the GST registration, the petitioner filed an appeal on 02.04.2024 before the Appellate Authority, which was dismissed on 19.08.2021 on the grounds of limitation.

REPLY ON BEHALF OF THE RESPONDENTS [IN W.P.(C) 5650/2024

54. *Per contra*, the respondents contend that the petitioner has misrepresented facts and failed to disclose that their application for cancellation of registration was rejected due to non-compliance with a notice issued in that regard. Despite the rejection, the petitioner resumed filing returns temporarily, indicating an attempt to exploit legal provisions by withholding complete information. The respondents assert that such conduct warrants prosecution under Section 340 of the CrPC for perjury due to the filing of a false

affidavit. The sequence of events reveals that the petitioner filed an application for cancellation of registration on 09.03.2022, following which a notice dated 31.03.2022 was issued, seeking clarification regarding non-filing of returns up to the date of cancellation.

55. The respondents submit that, as the petitioner failed to respond to the notice within the stipulated time, i.e., by 08.04.2022, the application for cancellation of registration was consequently rejected by order dated 09.05.2022. The respondents contend that the petitioner deliberately concealed this order and omitted it from the narration of facts.

56. Following the rejection of the Application for Cancellation of Registration, the petitioner resumed filing returns for the quarters of January-March 2022 on 23.04.2022 and April-June 2022 on 24.07.2022. However, the petitioner subsequently ceased filing returns, failing to comply for a consecutive period of six months, from July to December 2022. Consequently, the department issued the SCN dated 03.02.2023 for the cancellation of registration. As no response was received from the petitioner to the SCN, the department proceeded to pass the order for cancellation of registration on 18.04.2023.

57. The respondents aver that after the rejection of the petitioner's request for cancellation of registration, the petitioner had a reasonable opportunity to file an appeal against the said order within the prescribed time frame, including the condonable period of three months plus one additional month. However, the appeal was filed beyond this permissible limit, leading to its rejection by the Appellate

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Authority. Furthermore, the petitioner had an alternative and efficacious remedy available under the law by filing an application for revocation of the cancelled registration, which, it appears, was not exercised in this case. Reliance is placed on an order passed by the Apex Court in **Singh Enterprises v. Commissioner of Central Excise**[14]; **Garg Enterprises v. State of U.P.**[15]; and **Asst. Commr. (CT), LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Ltd.**[16]

ANALYSIS AND DECISION

58. Upon hearing learned counsels for parties and perusing the record, as well as the case law cited at the Bar, we find at the outset that the present writ petitions seeking an extension of the limitation period for filing an appeal under Section 107 of the CGST Act cannot be sustained in law. The reasons are not far to seek. Section 107 of the CGST Act provides as under:

> "**Section 107. Appeals to Appellate Authority.-**
>
> (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax 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.
>
> (2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer

[14] (2008) 3 SCC 70
[15] 2024 SCC OnLine All 2583
[16] (2020) 19 SCC 681

subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-

> (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
>
> (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of[twenty] crore rupees], in relation to which the appeal has been filed.
>
> [**Provided** that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.]

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 4[or section 74A].

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

> (15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.
>
> (16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.

59. A bare perusal of the aforesaid provision reveals that an assessee aggrieved by an order passed by the Adjudicating Authority may appeal to the Appellate Authority within three months from the date on which the said decision or order is communicated to such person. Sub-Section (4) of Section 107 of the CGST Act provides discretion to the Appellate Authority to entertain an appeal if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the prescribed three-month period, provided the appeal is presented within an additional period of one month.

60. It is well settled that once a statute prescribes a specific period of limitation, the Appellate Authority does not inherently hold any power to condone the delay in filing the appeal by invoking the provisions of Section 5[17] or 29[18] of the Limitation Act, 1963.

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[17] 5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

[18] 29. Savings.—(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

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Reference in this regard can be had to decision in the cited case of ***Singh Enterprises (supra)*** wherein it was observed as under:

> "8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. **The proviso to subsection (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days.** The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. **Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."** **{Bold portion emphasized}**

61. Similarly, in the decision of ***Garg Enterprises (supra)*** it was observed as under:

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(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.
(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

> "7. The Central Goods and Services Act is a special statute and a self-contained code by itself. Section 107 of the Act has an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite law that Section 5 of the Limitation Act, 1963 will apply only if it is extended to the special statute**. Section 107 of the Act specifically provides for the limitation and in the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. Accordingly, one cannot apply Section 5 of the Limitation Act, 1963 to the aforesaid provision.**
> 8. In light of the above, no interference is required in this petition and the same is, accordingly, dismissed."
>
> **{Bold portion emphasized}**

62. Reliance can also be placed on a decision of the Supreme Court in the case of **Commissioner of Customs and Central Excise v Hongo**[19]. This matter pertained to the unamended Section 36H (1) of the Central Excise Act, which provided for a reference to the High Court. The provision enabled the Commissioner of Central Excise or any other party to direct the Tribunal, within a period of 180 days from the date of service of notice of an order under Section 35C of the Central Excise Act, to refer to the High Court any question of law arising from such order of the Tribunal. The said provision neither extended the period of limitation for filing an application to the High Court beyond the prescribed period nor did it permit the condonation of the delay. In this context, it was held as follows:

> "19. The said decision in *Popular Construction Co. case* [(2001) 8 SCC 470] arose under the Arbitration and Conciliation Act, 1996. The question which arose for consideration in that case was whether provisions of Section 5 of the Limitation Act, 1963 are

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(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.

[19] (2009) 5 SCC 791

applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996. In that case, award was filed by the appellant Union of India in the Bombay High Court on 29-3-1999. The appellant filed an application challenging the award on 19-4-1999 under Section 30 read with Section 16 of the Arbitration Act, 1940. Subsequently, the application was amended by inserting the words "Arbitration and Conciliation Act, 1996" in place of "Arbitration Act, 1940". The application was dismissed by the learned Single Judge on 26-10-1999 on the ground that it was barred by limitation under Section 34 of the 1996 Act. The Division Bench rejected the appeal and upheld the findings of the learned Single Judge. The said order was challenged in this Court.

20. Though learned counsel for the appellant relied on the said decision in support of his claim, on perusal of the same, we are unable to concur with him. In para 12, this Court held that: (*Popular Construction Co. case* [(2001) 8 SCC 470] , SCC pp. 474-75)

> "*12*. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words used in the proviso to sub-section (3) are 'but not thereafter' and this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result."

Ultimately, this Court dismissed the appeal filed by the Union of India and confirmed the order of the High Court holding that the application filed to set aside the award is barred by limitation.

63. It would also be pertinent to notice the decision of the Supreme Court in the case of ***Asst. Commr. (CT), LTU, Kakinada (supra)***, wherein it was observed as under:

> "12. Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision

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otiose. In a recent decision of a three- Judge Bench of this Court in **Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited & Ors. [2@O0L7) 5 SCC 42]**, the statutory appeal filed before this Court was barred by 71 days and the maximum time limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in **Singh Enterprises v. Commissioner of Central Excise, Jamshedpur & Ors. [(2008) 3 SCC 70 = 2008 (221) E.L.T. 163 (S.C.)]**, **Commissioner of Customs and Central Excise v. Hongo India Private Limited & Anr. [(2009) 5 SCC 791 = 2009 (236) E.L.T. 417 (S.C.)], Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission & Ors. [(2010) 5 SCC 23]** and **Suryachakra Power Corporation Limited v. Electricity Department represented by its Superintending Engineer, Port Blair & Ors. [(2016) 16 SCC 152]** and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act.

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19. Arguendo, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21-6-2017 although it is admitted that the same was served on the authorised representative of the respondent on 22-6-2017. The date on which the respondent became aware about the order is not expressly stated either in the application for condonation of
delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12-9-2017 for and on behalf of respondent, without filing an appeal and without any demur - after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8-5-2018 and pursued the same in appeal, which was rejected on 17-8-2018. Furthermore, the appeal in question ne assessment order came to be filed only on 24-9-2018 without disclosing the date on which the respondent in fact became aware about the existence of the assessment order dated 21-6-2017. On the other hand, in the affidavit of Mr. Sreedhar Routh, Site Director of the respondent-company

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(filed in support of the application for condonation of delay before the appellate authority), it is stated that the company became aware about the irregularities committed by its erring official (Mr. P. Sriram Murthy) in the month of July, 2018, which pre-supposes that the respondent must have become aware about the assessment order, at least in July, 2018. In the same affidavit, it is asserted that the respondent-company was not aware about the assessment order, as it was not brought to its notice by the employee concerned due to his negligence. The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the High Court in the impugned judgment and order at all, but the High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. **That reason can have no bearing on the justification for non-filing of the appeal within the statutory period.** Notably, the respondent had relied on the affidavit of the Site Director and no affidavit of the concerned employee (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager (Finance)], who was associated with the erring employee during the relevant period, has been filed in support of the stand taken in the application for condonation of delay. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner. **Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24-9-2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all.**

xxxxx

21. Taking any view of the matter, therefore, the High Court ought not to have entertained the subject writ petition filed by the respondent herein. The same deserved to be rejected at the threshold." **{Bold portion emphasized}**

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

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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, 1950, 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 the decision of the Chhattisgarh High Court in **Nandan Steels &**

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Power Ltd. v. State of Chhattisgarh[20], 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**[21] 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

[20] 2022 SCC OnLine Chh 1428
[21] 2024 SCC OnLine All 2396

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**[22] 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 Kesanakurti v. State of AP**[23], 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.

[22] 2024 SCC OnLine Cal 8544
[23] 2024 SCC OnLine AP 3905

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.

71. The pending applications also stand disposed of.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

FEBRUARY 07, 2025
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