HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 15910/2026

CNR: RJHC010635252026 | URN: CW / 28517U / 2026

Shrawan Singh Devda, Proprietor of Ashapura Construction, GSTIN No. 08BCYPD3090G1ZB, having his Principal Place of Business at 74, Rajputo Ka Vas, Biroliya, Tehsil Sumerpur, District Pali, Rajasthan - 306126. ----Petitioner

Versus

1. The Union of India, through Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi - 110001.
2. Commissioner, Central Goods and Services Tax, Jodhpur, Commissionerate, Jodhpur, Rajasthan.
3. The Assistant Commissioner, Ward-III, Circle- Sumerpur, Pali, Rajasthan.
4. The Appellate Authority, State Tax Department, Jodhpur, Rajasthan. ----Respondents

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For Petitioner	:	Mr. Paras Mal Chopra, Adv. with Ms. Prerna Chopra, Adv. through VC Mr. Gaurang Deora, Adv. Ms. Shashi Vaishnav, Adv. for Mr. Dinesh Kumar Joshi, Adv.
For Respondents	:	Mr. Rajendra Prasad, Sr. Advocate-cum-Advocate General assisted by Mr. A.S.Shekhawat, Adv. Mr. Shyam Sunder Paliwal, Dy. Solicitor General of India Mr. Harshvardhan Singh, Adv. with Mr. Abhishek Bishnoi, Adv. for Mr. Mahaveer Bishnoi, AAG

HON'BLE MR. JUSTICE MUNNURI LAXMAN

HON'BLE MR. JUSTICE ANUROOP SINGHI

Judgment

Reportable

DATE OF CONCLUSION OF ARGUMENTS: 24/07/2026

DATE ON WHICH JUDGMENT IS RESERVED : 24/07/2026

FULL ORDER OR OPERATIVE PART: FULL ORDER

DATE OF PRONOUNCEMENT: 18/08/2026

[Per Hon'ble Mr. Justice Munnuri Laxman] :

1) The present writ petition has been filed with the following prayers:

(i) To quash and set aside the order dated 03.08.2023 passed by respondent No. 3 in Application Reference Number (ARN) AA080523024310T, whereby the petitioner's GST registration was cancelled with retrospective effect;

(ii) To quash and set aside the order dated 10.06.2026 passed by respondent No. 4 (the Appellate Authority), whereby the statutory appeal preferred by the petitioner was dismissed as being barred by limitation;

(iii) To direct the respondents to restore the petitioner's GST registration and permit the petitioner to regularize the GST compliances by discharging the applicable tax, interest, late fee, penalty, and any other statutory liabilities, if any; and

(iv) To direct respondent No. 3 to reconsider the matter relating to the cancellation of the petitioner's GST registration and to pass a fresh order in accordance with law.

2) Concisely, the case of the petitioner is that he is the sole proprietor carrying on the business of construction under the name and style of "Ashapura Construction" and is registered under the provisions of Central Goods and Services Tax Act, 2017 (**CGST Act, 2017**) and Rajasthan Goods and Services Tax Act, 2017 (**RGST Act, 2017**) since 01.07.2017. The respondent No.3 issued a show-cause notice dated 09.05.2023 proposing cancellation of the petitioner's GST registration on the ground of failure to furnish GST Returns for six consecutive months. Simultaneously, pending the cancellation proceedings, the GST registration of the petitioner was also suspended.

3) The petitioner failed to submit any reply to the show-cause notice within the prescribed time or before the conclusion of the cancellation proceedings. Consequently, the respondent No.3 passed the order dated 03.08.2023 cancelling the petitioner's GST registration retrospectively w.e.f. 31.03.2023.

4) The petitioner thereafter preferred statutory appeal before the Appellate Authority under Section 107 of the RGST Act, 2017. However, the appeal was filed beyond the original prescribed period of limitation as well as the extended period of limitation. Accordingly, the Appellate Authority, vide order dated 10.06.2026, dismissed the appeal as barred by limitation, holding that no sufficient cause had been shown to condone the delay. Aggrieved thereby, the petitioner has preferred the present writ petition.

5) The learned counsel appearing for the petitioner submitted that the order cancelling the petitioner's GST registration retrospectively, without assigning any reasons, is a non-speaking order and is contrary to the provisions of Section 29 of the RGST Act, 2017. It is further contended that the retrospective cancellation of the registration without affording the petitioner a proper opportunity of hearing is bad in law. It is also contended that the Appellate Authority failed to consider the appeal on merits and dismissed it solely on the technical ground of limitation, thereby depriving the petitioner of the statutory right of appeal and causing manifest injustice. According to the learned counsel, such retrospective cancellation of the petitioner's GST

registration is arbitrary and violative of Articles 14, 19(1)(g), and 21 of the Constitution of India.

6) It is further submitted by the learned counsel for the petitioner that there is no legal bar preventing this Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, from condoning the delay and directing the Appellate Authority to decide the appeal on merits. It is also contended that to demonstrate his bona fides, the petitioner has already furnished the pending returns and has undertaken to discharge all statutory liabilities in accordance with law. In support of his contentions, the learned counsel for the petitioner has relied upon the following judgments rendered by Division Bench of this Court in the case of:

(i) **Molana Construction Company Vs. Central Goods & Service Tax Department & Ors.**, [D.B.Civil Writ Petition No.12076/2024], decided on 26.07.2024,

(ii) **RPC PSIPL JV Vs. State of Rajasthan & Ors.**, [D.B.Civil Writ Petition No.7260/2025], decided on 02.07.2025,

(iii) **Govind Traders Vs. Union of India & Ors.** [D.B.Civil Writ Petition No.10107/2025], decided on 29.10.2025,

(iv) **M/s M R Traders Vs. Union of India & Ors.,** [D.B.Civil Writ Petition No.4558/2025], decided on 07.01.2026,

(v) **Mehtab Singh Vs. Union of India & Ors.,** [D.B.Civil Writ Petition No.21148/2025], decided on 18.03.2026,

(vi) **M/s Infinite EV Solutions Vs. Deputy Commissioner**, [D.B.Civil Writ Petition No.4291/2024], at Jaipur Bench, Jaipur decided on 07.07.2026,

(vii) **M/s Saini Construction Company Vs. State of Raj. & Ors.**, [D.B. Civil Writ Petition No.7664/2024], at Jaipur Bench, Jaipur decided on 17.07.2026 and

(viii) **Ritik Acharya, proprietor of M/s MileStone Traders Vs. Union of India & Ors.**, [D.B.Civil Writ Petition No.9022/2026] decided on 27.04.2026.

7) Learned counsel for the petitioner also submitted that there was a sufficient cause for the petitioner to seek condonation of delay as the delay in filing of the appeal before the Appellate Authority was only on account of time taken in taking legal advice and collecting relevant documents, thus, the Appellate Authority ought to have condoned the delay and considered the appeal on merits.

8) *Per contra*, learned Senior Advocate-cum-Advocate General and learned Deputy Solicitor General of India appearing for the respondents submitted that the petitioner failed to furnish GST returns for six consecutive months, as required under Section 39 of the RGST Act, 2017. Being a registered person, the petitioner was required to furnish returns for every calendar month in the prescribed manner, indicating the inward and outward supplies of goods or services or both, input tax credit

availed, tax payable, tax paid, and such other particulars, on or before the twentieth day of the month succeeding relevant calendar month. Since the petitioner failed to furnish the returns as mandated under Section 39 of the RGST Act, 2017 for six consecutive calendar months, the Proper Officer/Adjudicating Authority issued a show-cause notice under Rule 22(1) of the Central Goods and Services Tax Rules, 2017 read with Section 29 of the RGST Act, 2017, proposing cancellation of the GST registration. Simultaneously, the petitioner's GST registration was suspended. Despite service of the show-cause notice, the petitioner failed to submit any reply. Consequently, the respondent No. 3 passed the order cancelling the petitioner's GST registration by invoking Rule 22(3) of the GST Rules, 2017. It is further the stand of the respondents that a statutory appeal against the order of cancellation is required to be filed within three months from the date of communication of the order. If the appeal is not filed within the prescribed period, the Appellate Authority may, on being satisfied that sufficient cause prevented the appellant from filing the appeal within time, condone the delay for a further period of one month. In the present case, the petitioner preferred the appeal beyond the maximum period of limitation, including the condonable period. Therefore, the Appellate Authority rightly dismissed the appeal as being barred by limitation. According to the respondents, there is no merit in the writ petition.

9) Learned counsel for the respondents further submitted that the order cancelling the petitioner's GST registration with effect from the date on which the petitioner first committed the

default cannot, in the strict sense, be regarded as an order of retrospective cancellation. It is contended that an order of cancellation of GST registration can be said to be retrospective only when the cancellation is made with effect from the date anterior to period of default. In such a situation, the authority is required to assign specific reasons for giving retrospective effect to the cancellation which is not the case in hand. It is further submitted that at the stage of issuance of a show-cause notice under Section 29 of the RGST Act, 2017, the proper officer is only required to indicate the proposed action. The authority is neither required nor expected to refer proposed action, as that would amount to pre-judging the matter before adjudication. It is also contended that neither the RGST Act, 2017 nor the GST Rules, 2017 contemplate issuance of a separate show-cause notice after the adjudicating authority concludes that the registered person has failed to satisfactorily explain the alleged non-compliances before passing an order of cancellation of the registration with retrospective effect. It is, therefore, submitted that there is no violation of the principles of natural justice.

10) The learned counsel appearing for the respondents further submitted that Section 107 of the RGST Act, 2017 has been held to be constitutionally valid by the Hon’ble Apex Court in various judgments. It is contended that once the statutory provision prescribing a special period of limitation under a special enactment has been upheld as constitutionally valid, an aggrieved person is required to prefer an appeal within the prescribed period. In the event the appeal is not filed within the prescribed period, the

Appellate Authority is empowered to condone the delay only for a further period of one month upon being satisfied that sufficient cause has been shown. It is further submitted that if the appeal is filed beyond the maximum period of limitation, including the condonable period of one month, the Appellate Authority becomes *functus officio* and has no jurisdiction to entertain the appeal or to condone the delay beyond the period expressly prescribed under the statute. Admittedly, in the present case, the petitioner preferred the appeal after the expiry of the said period. Therefore, it is contended that the Appellate Authority has not committed any illegality in dismissing the appeal as barred by limitation.

11) It is also submitted by the learned counsel for the respondents that subsequent compliance with the statutory requirements does not obliterate the earlier violations, particularly when such compliance is made only after the cancellation of the GST registration and not prior thereto. It is submitted that had the petitioner furnished the pending returns and discharged the tax liability before the order of cancellation was passed, the Authorities could have taken a lenient view and refrained from invoking the drastic power of cancellation of the GST registration.

12) The learned counsel for the respondents also relied upon the decision of the Hon'ble Apex Court in the cases of:-

(i) **Assistant Commissioner (CT) LTU, Kakinada & Ors. Vs. Glaxo Smith Kline Consumer Health Care Ltd.**, reported in (2020) 19 Supreme Court Cases 681,

(ii) **M/s Multi Trading Agencies Drangbal Vs. Union Territory of Jammu and Kashmir & Anr.,** [Special Leave Petition (Civil) Diary No.58716/2024], decided on 17.02.2025,

(iii) **M/s Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur & Ors.,** [Appeal (Civil) No.5949/2007], decided on 14.12.2007 and

the decision of coordinate Bench of this Court in the cases of:-

(i) **M/s Mateshwari Construction & Traders Vs. Commissioner (Appeal) of CGST**, [D.B.Civil Writ Petition No.7901/2025], decided on 22.04.2025

(ii) **M/s Rudraksh Collection Vs. Joint Commissioner (Appeal), RGST Department & Ors.**, [D.B.Civil Writ Petition No.15575/2024], decided on 23.09.2024,

(iii) **Bharti Marbles & Granites & Ors. Vs. Superintendent, Central Goods and Service Tax**, [D.B.Civil Writ Petition No.20843/2024], decided on 19.08.2025,

(iv) **Ashok Verandani Vs. Central Board of Indirect Taxes & Customs & Ors,** [D.B.Civil Writ Petition No.2430/2024], at Jaipur Bench, Jaipur decided on 01.03.2024.

13) We have considered the rival submissions of counsel for both the parties and carefully perused the material available on record.

14) Undisputedly, the petitioner is a sole proprietorship concern registered with the respondent-Authorities under the RGST Act, 2017. The petitioner obtained the said registration on 01.07.2017 and has been carrying on the business of construction in the name and style of "Ashapura Construction". Section 39 of the RGST Act, 2017 mandates furnishing of returns for every calendar month. Under Section 29(2)(c) of the RGST Act, 2017, the Proper Officer is empowered to cancel the registration of a registered person if the returns required under Section 39 are not furnished for a continuous period of six months. The said provision also empowers the authority to cancel the registration with retrospective effect, wherever the circumstances so warrant. In this regard it is apt to refer to Section 29 of the RGST Act, 2017, which reads hereunder:-

> **"29. Cancellation or suspension of registration.-**
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> (1) …
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> (2) The proper officer may cancel the registration of a person from such date, i**ncluding any retrospective date**, as he may deem fit, where:–
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> (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
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> (b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
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> (c) a**ny registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; 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, wilful 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.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semifinished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.”

15) It is also apt to refer to Section 39 of the RGST Act, 2017, which reads hereunder:-

> **"39. Furnishing of returns.—**(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 **shall, for every calendar month or part thereof, furnish**, in such form and manner as may be prescribed, **a return,** electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed, **on or before the twentieth day of the month succeeding such calendar month or part thereof.**
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> (2)……..
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> (3)……
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> (4)…….
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> (5)…….
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> (6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein: Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.
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> (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.
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> (8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.
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> (9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or subsection (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or

incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him."

16) A reading of Section 39(1) of the RGST Act, 2017 makes it clear that every registered person, other than an Input Service Distributor, a non-resident taxable person, or a person paying tax under Sections 10, 51, or 52 of the Act, is required to furnish return, for every calendar month, in the prescribed manner, giving details of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid, and such other particulars as may be prescribed. Such return is required to be furnished on or before the twentieth day of the month succeeding the relevant calendar month. A plain reading of Section 29(2)(c) of the RGST Act, 2017 shows that the Proper Officer is empowered to cancel the registration of a registered person if such person fails to furnish returns for a continuous period of six months. The provision also empowers the Proper Officer to cancel the registration with retrospective effect, wherever the facts and circumstances of the case so justify. The first proviso to Section 29(2) of the RGST Act, 2017 mandates that no registration shall be cancelled without affording the registered person an opportunity of being heard. The second

proviso to the said sub-section empowers the Proper Officer to suspend the registration of the registered person pending completion of the proceedings for cancellation of registration.

17) In the present case, there is no dispute that the respondent No. 3 issued a show-cause notice proposing cancellation of the petitioner's GST registration. Simultaneously, the petitioner's registration was suspended pending completion of the cancellation proceedings. Admittedly, the petitioner did not submit any reply to the said show-cause notice. Consequently, the respondent No. 3 passed the order cancelling the petitioner's GST registration with effect from 31.03.2023, which is the date falling within the period of default and not anterior thereto.

18) No doubt, the registration cannot be cancelled with retrospective effect mechanically. However, where the Proper Officer considers it appropriate, the cancellation may be given retrospective effect. Such satisfaction must be founded on objective criteria and supported by valid reasons. The concept of retrospective cancellation must be understood in the context that where the cancellation is given effect from the date anterior to the commencement of the period of default, the Proper Officer is required to assign specific reasons for giving such retrospective effect beyond the period of violation. In the present case, the order of cancellation was not given effect from the date anterior to the period of default; rather, it was made effective from a date falling within the period of default itself and it is not retrospective in strict sense.

19) The contention of the learned counsel for the petitioner that a separate show-cause notice was required to be issued before giving retrospective effect to the order of cancellation is devoid of merit. There is no provision under the RGST Act, 2017 requiring the issuance of a separate show-cause notice merely because the order of cancellation is proposed to operate retrospectively. Section 29 of the RGST Act, 2017 requires only that a show-cause notice be issued before taking the action of cancellation of registration. Such notice is required to inform the registered person of the alleged non-compliances constituting the basis for the proposed cancellation and not the precise nature or extent of the consequential action that may ultimately be taken. Therefore, the said contention is rejected.

20) The other contention relates to the validity of the proceedings culminating in the cancellation of the petitioner's GST registration and the extent of this Court's jurisdiction under Article 226 of the Constitution of India to condone the delay in filing the statutory appeal and remand the matter to the Appellate Authority for adjudication on merits. The learned counsel for the petitioner has placed strong reliance on the decision of this Court in **M/s Molana Construction Company** (cited supra), decided on 26.07.2024, wherein a Coordinate Bench of this Court, after considering the rigours of Section 107 of the CGST Act, 2017, exercised its extraordinary jurisdiction under Article 226 of the Constitution of India, and condoned the delay in filing the appeal, and remitted the matter to the Appellate Authority for consideration on merits. The other judgments of the Coordinate

Benches relied upon by the learned counsel for the petitioner are also founded on the decision in **Molana Construction Company** (cited supra).

21) The learned counsel for the respondents, on the other hand, placed strong reliance on the decisions of this Court in **Ashok Verandani** (cited supra), decided on 01.03.2024, **M/s Rudraksh Collection** (cited supra), decided on 23.09.2024, **Bharti Marbles & Granites** (cited supra), and **M/s Mateshwari Construction & Traders** (cited supra), as well as the decisions of the Apex Court in **M/s Multi Trading Agencies, Drangbal** (cited supra) and **M/s Singh Enterprises** (cited supra).

22) In the case of **M/s Multi Trading Agencies, Drangbal** (cited supra), the Apex Court declined to condone the delay beyond the period permissible under the statutory framework. Likewise, in **M/s Singh Enterprises** (cited supra), the Apex Court held that where the statute prescribes a specific period of limitation along with a limited period up to which delay may be condoned, the appellate authority has no jurisdiction to condone the delay beyond the period expressly provided under the statute. The decision further makes it clear that in the absence of any statutory power to condone the delay beyond the prescribed limit, such delay cannot be condoned.

23) Learned counsel for the respondents contended that the decision in **Molana Construction Company** (cited supra) is contrary to the law laid down by the Apex Court in **Glaxo Smith Kline Consumer Health Care Ltd.** (cited supra), **M/s Multi**

Trading Agencies, Drangbal (cited supra), and **M/s Singh Enterprises** (cited supra), as well as the earlier decision of a Coordinate Bench of this Court in **Ashok Verandani** (cited supra). It is their submission that the judgment in **Molana Construction Company** (cited supra), and the subsequent judgments following the said decision, do not lay down the correct proposition of law and are liable to be declared *per incuriam*.

24) We have carefully considered the judgments relied upon by the learned counsel for the respondents. The decision of the Apex Court in **Glaxo Smith Kline Consumer Health Care Ltd.** (cited supra) arose out of a challenge to an assessment order. In that case, the assessment order had attained finality as the assessee had failed to avail the statutory remedy of appeal within the period of limitation prescribed under the relevant statute. Dealing with the challenge, the Apex Court in para nos. 14, 15 & 17 of the said judgment held as follows:-

> "14. In the backdrop of these facts, the central question is : Whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad and also Nivedita Sharma v. COAI. In Thansingh Nathmal v. Supt. of Taxes [Thansingh Nathmal v. Supt. of Taxes, AIR 1964 SC 1419] , the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very

wide, the Court must exercise self-imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person. In para 7, the Court observed thus : (Thansingh Nathmal case, AIR p. 1423)

> "7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the taxing authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not

permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

15. We may usefully refer to the exposition of this Court in Titaghur Paper Mills Co. Ltd. v. State of Orissa, wherein it is observed that where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute must only be availed of. In para 11, the Court observed thus : (SCC pp. 440-41)

> "11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford in the following passage:
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> > "There are three classes of cases in which a liability may be established founded upon statute. … But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.… The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."

> The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspaper Ltd. and has been reaffirmed by the Privy Council in Attorney General of Trinidad & Tobago v. Gordon Grant & Co. Ltd. and Secy. of State v. Mask & Co. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."

In the subsequent decision in Mafatlal Industries Ltd. v. Union of India, this Court went on to observe that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however, added a word of caution and expounded that the Constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.

16. xxx xxx xxx

17. The principle underlying the dictum in this decision would apply proprio vigore to Section 31 of the 2005 Act including to the powers of the High Court under Article 226 of the Constitution. Notably, in this decision, a submission was canvassed by the assessee that in the peculiar facts of that case (as urged in the present case), the Court may exercise its jurisdiction under Article 142 of the Constitution, so that complete justice can be done. This argument has been considered and plainly rejected in the following words : (ONGC case, SCC pp. 48-51, paras 12-16)

> "12. In A.R. Antulay v. R.S. Nayak, while explicating and elaborating the principles under Article 142, Sabyasachi Mukharji, J. (as his Lordship then was) opined thus : (SCC p. 656, para 50)
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> > "50. … The fact that the rule was discretionary did not alter the position. Though Article 142(1) empowers the Supreme Court to pass any order to do complete justice between the parties, the court cannot make an order inconsistent with the fundamental rights guaranteed

> by Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose. Gajendragadkar, J., speaking for the majority of the Judges of this Court said that Article 142(1) did not confer any power on this Court to contravene the provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At AIR pp. 1002-03, para 12 : SCR p. 899 of the Reports, Gajendragadkar, J., reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice". But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws. The court, therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32."

13. The said decision has been clarified by a Constitution Bench in Union Carbide Corpn. v. Union of India, wherein M.N. Venkatachaliah, J. (as his Lordship then was) speaking for the majority, ruled that : (SCC pp. 634-35, para 83)

> "83. It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the

powers of the Supreme Court under Article 142(1) is unsound and erroneous. In both Prem Chand Garg v. Excise Commr., as well as A.R. Antulay v. R.S. Nayak, cases the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is not exhausted by Section 320 or 321 or 482 CrPC or all of them put together. The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers — limited in some appropriate way — is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to Garg case, said that limitation on the powers under Article 142 arising from "inconsistency with express statutory provisions of substantive law" must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression "prohibition" is read in place of "provision" that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to

such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of "complete justice" of a cause or matter, the Supreme Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not "complete justice" of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise."

14. In this regard, another Constitution Bench in Supreme Court Bar Assn. v. Union of India opined : (SCC pp. 437-38, para 56)

"56. As a matter of fact, the observations on which emphasis has been placed by us from theUnion Carbide case, A.R. Antulay case and Delhi Judicial Service Assn. v. State of Gujarat, go to show that they do not strictly speaking come into any conflict with the observations of the majority made in Prem Chand Garg case. It is one thing to say that "prohibitions or limitations in a statute" cannot come in the way of exercise of jurisdiction under Article 142 to do complete justice between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, this Court can altogether ignore the substantive provisions of a statute, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say so in Union Carbide case either expressly or by implication and on the contrary it has been held that the Supreme Court will take note of the express provisions of any substantive statutory law and regulate the exercise

of its power and discretion accordingly. …"

15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. v. Union of India, has ruled that there is no conflict of opinion in Antulay case or in Union Carbide Corpn. case with the principle set down in Prem Chand Garg v. Excise Commr. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. case. As the pronouncement in Chhattisgarh SEB v. CERC, lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution.

16. We had stated earlier that we will be adverting to the passage in Suryachakra Power Corpn. Ltd. v. Electricity Deptt. There, the Court had referred to Section 14 of the Limitation Act. It fundamentally relied on M.P. Steel Corpn. v. CCE, wherein the Court after referring to certain authorities, analysed thus : (M.P. Steel Corpn. case , SCC p. 91, para 43)

"43. … when a certain period is excluded by applying the principles contained in

> Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the statute concerned continues to be the stated period and not more than the stated period. We conclude, therefore, that the principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case."
>
> (Emphasis in original and supplied)

> Similarly, in State v. Mushtaq Ahmad, this Court opined that where minimum sentence is provided for an offence then no court can impose lesser punishment on ground of mitigating factors."

25) A reading of the aforesaid judgment makes it clear that in an appropriate case, where an assessee approaches the Constitutional Court under Articles 226 or 227 of the Constitution of India before the expiry of the statutory period of limitation for filing an appeal, challenging the assessment order on the ground that it is without jurisdiction, in excess of jurisdiction, passed by overstepping the limits of jurisdiction, in gross disregard of the provisions of law or the prescribed procedure, or in violation of the principles of natural justice where no procedure has been prescribed, the High Court may entertain such a challenge. Equally, the High Court may decline to entertain the writ petition on the ground that an efficacious alternative statutory remedy is available. In such a situation, while relegating the petitioner to the statutory remedy, the High Court may direct that the period spent in bona fide prosecuting the writ petition be taken into

consideration for the purpose of condonation of delay before the Appellate Authority. However, such a power cannot be exercised where the writ petition itself is filed after the expiry of the statutory period of limitation prescribed for filing the appeal. In such cases, the High Court cannot, **as a matter of course,** disregard the legislative mandate and make the provision of limitation otiose and entertain the writ petition so as to circumvent the statutory scheme. Any such exercise of jurisdiction would run contrary to the law laid down by the three-Judge Bench of the Apex Court in **Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited & Ors.**, reported in (2017) 5 SCC 42. The words "**a matter of course"** used in second situation in **Glaxo Smith Kline Consumer Health Care Ltd.** (cited supra) does not completely prohibit invocation of extraordinary jurisdiction of High Court under Article 226 of the Constitution of India, but such jurisdiction cannot be exercised in a manner inconsistent with the legislative intent. If a writ is issued contrary to the statutory scheme governing limitation, the legislative purpose underlying the enactment would be rendered otiose.

26) A similar view has been taken by the Apex Court in **M/s Multi Trading Agencies, Drangbal** (cited supra), wherein the Court, in a concise judgment, declined to condone the delay in view of the statutory bar. The same principle was reiterated by the Apex Court in **M/s Singh Enterprises** (cited supra).

27) The earliest view of the Division Bench of this Court, as reflected in **Ashok Verandani** (cited supra) is that where an appeal is filed beyond the maximum period of limitation, including the condonable period, the delay cannot be condoned, as doing so would amount to defeating the statutory scheme. The said decision has subsequently been followed in several judgments rendered by Coordinate Benches of this Court. However, in **M/s Molana Construction Company** (cited supra), the Division Bench proceeded to condone the delay, apparently without the benefit of considering the earlier binding decision of the Division Bench in **Ashok Verandani** (cited supra), which had categorically held that such delay could not be condoned. Consequently, a different view came to be taken. With utmost respect to the learned Judges who decided **M/s Molana Construction Company** (cited supra), we are of the considered opinion that the said judgment does not appear to be in consonance with the law laid down by the Apex Court in **Glaxo Smith Kline Consumer Health Care Ltd.** (cited supra), **M/s Multi Trading Agencies, Drangbal** (cited supra), and **M/s Singh Enterprises** (cited supra) and earlier binding decision of the Division Bench of this court in **Ashok Verandani** (cited supra), which had categorically held that such delay could not be condoned. The subsequent judgments relied upon by the learned counsel for the petitioner are founded upon the decision in **M/s Molana Construction Company** (cited supra) which was rendered without considering the earlier Division Bench decision in **Ashok Verandani** (cited supra) as it was not brought to the notice of the bench and the

binding precedents of the Apex Court referred to hereinabove and all such decisions are *per incuriam* and, therefore, cannot be treated as laying down the correct proposition of law.

28) No doubt, there is no absolute bar to invoke extraordinary jurisdiction in entertaining the writ petition under Article 226/227 of the Constitution of India merely because it has been filed after the expiry of the period prescribed for filing a statutory appeal but **not as a matter of course**. However, while exercising jurisdiction under Article 226 of the Constitution of India, this Court cannot disregard the statutory scheme of limitation and entertain such writ petitions and condone the delay and remand back the case to appellant authority to decide appeal on merits. The statutory period prescribed for availing the appellate remedy cannot be circumvented by invoking the extraordinary writ jurisdiction of this Court. It is true that in exceptional and extraordinary circumstances, this Court may interfere with the original order notwithstanding the expiry of the period of limitation for filing the statutory appeal, but not **as a matter of course**. However, interference can be justified only in exceptional circumstances such as where an order has been passed by completely disregarding the principles of natural justice or inherent lack of jurisdiction is clearly established. In the absence of such circumstances, a writ petition cannot ordinarily be entertained so as to defeat the legislative intendment. In the present case, no exceptional circumstance has been demonstrated warranting interference with the order passed by the Proper Officer.

29) In view of the above, there is no occasion whatsoever for this Court to enter into the reasons assigned by the petitioner for seeking condonation of delay in filing appeal before the Appellate Authority.

30) The contention of the petitioner that the impugned action violates Articles 14, 19(1)(g) and 21 of the Constitution of India also cannot be accepted. The reason is that petitioner is not rendered remediless, as the statutory scheme permits the petitioner to seek fresh registration in accordance with law and continue carrying on the business. It is well settled that fiscal statutes are required to be construed strictly. The statutory provisions governing assessment, adjudication, appeals, and limitation under the GST enactments have been consciously drafted by the legislature with the object of ensuring certainty, expeditious adjudication, and efficient collection of tax. Any interpretation permitting the statutory scheme of limitation to be routinely bypassed in exercise of writ jurisdiction would defeat the legislative intent and undermine the efficacy of the statutory framework enacted for the orderly administration of tax laws. In view of the above, the present writ petition is devoid of merit and is liable to be dismissed.

31) In the result, the present writ petition is dismissed.

32) Pending interlocutory applications, if any, shall stand disposed of.

(ANUROOP SINGHI),J **(MUNNURI LAXMAN),J**

Narendra/