

GAHC010153202025



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

Case No. : WP(C)/3926/2025

DIPJYOTI BORAH
SON OF LATE RAJEN BORAH
RESIDENT OF EXCEL PUBLIC SCHOOL ROAD,
BEHIND GANESH MANDIR
LOKHARA FOREST, P.O. HAWKUCHI
P.S. GORCHUK, DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF FINANCE AND TAXATION, DISPUR, ASSAM.

2:THE PRINCIPAL COMMISSIONER
STATE TAX

KAR BHAWNA
G.S. ROAD

DISPUR
GUWAHATI- 781006.

3:THE ASSISTANT COMMISSIONER
STATE TAX

KAR BHAWAN
GUWAHATI D-5
ASSA

Advocate for the Petitioner : MR. A K GUPTA, MR. R S MISHRA

Advocate for the Respondent : SC, FINANCE AND TAXATION,

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

18.07.2025

Heard Shri R. S. Mishra, learned counsel for the petitioner and Shri B. Choudhury, learned Standing Counsel, Finance & Taxation for the respondent Nos. 1 to 3.

2. It is the case of the petitioner that he has been carrying out his proprietorship business under the name & style, "Shri Dipjyoti Borah" as the sole proprietor. He is an Assesee registered under the Central Goods and Services Tax (CGST) Act, 2017/Assam Goods and Services Tax (AGST) Act, 2017 bearing registration No. 18AOAPB8032R1ZP. On the reason of non-filing of GST returns for a continuous period of six months, the petitioner was served with a show cause notice bearing reference No.ZA180522002196V dated 04.05.2022 asking him to furnish reply to the aforesaid notice within a period of 30 (thirty) days from the date of service of notice and it was mentioned in the aforesaid show cause notice that if the petitioner fails to furnish a reply within the stipulated date or fails to appear for personal hearing on the appointed date and time, the case will be decided ex-parte on the basis of the available records and on merits. Thereafter, the impugned order dated 06.06.20223 was passed by the Assistant Commissioner of State Tax, Guwahati-D-S whereby the petitioner's GST registration has been cancelled for not furnishing returns for a continuous period of 6 (six) or more months.

3. The learned counsel for the petitioner submits that due to non-conversant of online procedure and also for the loss sustained during Covid-19, he could not visit the GST portal and accordingly could not submit any reply to the said show cause notice in time. It is further contended that when the petitioner came across the said notice,

the time for filing reply and attending the hearing was already over and order had also been uploaded in the portal.

4. The petitioner further contends that after recovering from impact of Covid-19, he updated all his pending returns up to the month of June, 2022 as allowed by the GST portal and while updating his returns, the petitioner has also discharged all his GST dues along with his late fees and interest.

5. Thereafter, the petitioner tried to file the necessary application seeking revocation of GST cancellation, however, the same could not be filed as the time limit prescribed for filing of revocation application was elapsed and a message was displayed in the screen "timeline of 270 days from the date of cancellation order provided to taxpayer to file application for revocation of cancellation is expired."

6. Being aggrieved, the petitioner has approached this Court by filing the present writ petition.

7. Shri Mishra, learned counsel for the petitioner has submitted that the petitioner is ready and willing to comply with all the formalities required as per proviso to sub-rule (4) of Rule 22 of the CGST Rules, 2017.

8. As per Section 29(2)(c), an officer, duly empowered, may cancel the GST registration of a person from such date, including any retrospective date, as he deems fit, where any registered person, has not furnished returns for a continuous period of 6 (six) months. Rule 22 of the CGST Rules, 2017 has laid down the procedure for cancellation of the registration. The said Rule is extracted herein below:

"Rule 22 : Cancellation of Registration (1) Where the proper officer has reasons

to believe that the registration of a person is liable to be cancelled under Section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.

(2) The reply to the show cause notice issued under sub-rule [1] shall be furnished in FORM REG-18 within the period specified in the said sub-rule.

(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted under Rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1), (or under sub-rule (2A) of Rule 21A) cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under subsection (5) of Section 29.

(4) Where the reply furnished under sub-rule (2) (or in response to the notice issued under sub-rule (2A) of Rule 21A) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20 : Provided that where the person instead of replying to the notice served under sub rule (1) for contravention of the provisions contained in Clause (b) or Clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20. (5) The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.”

9. It is discernible from a reading of the proviso to sub-rule (4) of Rule 22 of the CGST Rules 2017 that if a person, who has been served with a show cause notice under Section 29(2)(c) of the CGST Act, 2017, is ready and willing to furnish all the pending returns and to make full payment of the tax itself along with applicable interest and late fee, the officer, duly empowered, can drop the proceedings and pass an order in the prescribed Form i.e. Form GST REG-20.

10. The learned counsel for the parties have also referred to an Order dated 11.10.2023 passed in WP(C) No. 6366/2023 (Sanjoy Nath vs. Union of India and others) wherein the petitioner therein was similarly situated like the present petitioner.

11. Having regard to the fact that the GST registration of the petitioner has been cancelled under Section 29(2)(c) of the CGST Act, 2017 for the reason that the petitioner did not submit returns for a period of 6 (six) months or more and the provisions contained in the proviso to sub-rule (4) of Rule 22 of the CGST Rules, 2017 and cancellation of registration entails serious civil consequences, this Court is of the considered view that in the event the petitioner approaches the officer, duly empowered, by furnishing all the pending returns and make full payment of the tax dues, along with applicable interest and late fee, the officer duly empowered, has the authority and jurisdiction to drop the proceedings and pass an order in the prescribed Form.

12. In such view of the matter, this writ petition is disposed of by providing that the petitioner shall approach the concerned authority within a period of 2 (two) months from today seeking restoration of her GST registration. If the petitioner submits such an application and complies with all the requirements as provided in the proviso to sub-rule (4) of Rule 22 of the CGST Rules, 2017, the concerned authority shall

consider the application of the petitioner for restoration of the GST registration and passed necessary orders in accordance with law. The aforesaid process be completed expeditiously and preferably within an outer limit of 60 days from the date of receipt of the certified copy of this order.

13. It is needless to say that the period as stipulated under Section 73 (10) of the Central GST Act/State GST Act shall be computed from the date of the instant order, except for the financial year 2024-25, which shall be as per Section 44 of the Central GST Act/State GST Act. The petitioner herein also be liable to make payment of arrears i.e. tax, penalty, interest and late fees.

14. The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant