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By Nidhi, Advocate



**Judgment No.: 042**  
**Dt.: 04-01-2024**



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## Judgment Deals With

<b>Section/Rule</b>	Section 29
<b>Authority</b>	Delhi High Court
<b>Case Name</b>	Kritika Agarwal VS Union Of India And Ors.
<b>Dated</b>	18 <sup>th</sup> July, 2023

### Brief Facts:

On 07.09.2022, the Anti Evasion Staff of Central Tax CGST, visited and searched the petitioner's premises. Few documents from her premises were taken without drawing any panchnama.

The petitioner was not present during the course of the search but her father-in-law (Sh. Ashok Kumar Jain), who was present at the premises, was compelled to tender a statement. He was also pressurized to deposit a sum of ₹20,00,000/-, through DRC-03 dated 07.09.2022.

Thereafter, the petitioner was issued a SCN dated 06.10.2022 proposing to cancel the petitioner's GST Registration for the reason that the tax payer has not present in office on 19.09.22 against the summons given u/s 70 of the CGST Act, issued on 13.09.2022. The petitioner responded to the said SCN on 10.10.2022 asserting that her accountant had visited the office as required and had sought further time to prepare the documents.

The petitioner's contention was not accepted and the proper officer passed the Order-in-Original dated 28.10.2022, cancelling her GST Registration with effect from 03.07.2017 for the reason that Anti Evasion of Central Tax CGST has directed to initiate the cancellation of registration from the date of Registration in GST.

The petitioner appealed against the said order under Section 107 of the CGST Act, 2017. However, the said appeal was rejected by the Order-in-Appeal dated 30.05.2023 solely on the ground of limitation.

The petitioner was required to file an appeal before 28.01.2023. However, the petitioner filed the same on 13.02.2023. The petitioner had along with the appeal filed an application seeking condonation of the delay of 14 days. She had explained that the delay was occasioned as she was in the process of providing the documents to the Anti Evasion Branch for verification.

The petitioner had also sent a letter dated 12.12.2022, requesting that the cancellation of her GST Registration be revoked.

#### **Findings & Decision of the Court:**

Undisputedly, in terms of Section 107(4) of the CGST Act, the Appellate Authority had the discretion to condone the delay in filing the appeal, not exceeding 1 month. In the present case, it is apparent that the petitioner was interacting with the Department for resolution of the matter regarding cancellation of the GST Registration and thus, the petitioner had sufficiently explained the delay of 14 days.

Considering the wide ramifications of cancellation of GST Registration, the Appellate Authority ought to have condoned the delay.

The Order-in-Original dated 28.10.2022 also contained a tabular statement, which indicated that no tax was found payable. It is trite law that an authority that is vested with the power to take a decision is required to independently exercise the power and cannot do so on mere directions of another authority, without independently satisfying itself of the said decision.

In the present case, it is apparent that the impugned Order-in-Original dated 28.10.2022 has been passed without considering the petitioner's reply to the Show Cause Notice dated 06.10.2022. Plainly, the impugned Order-in-Original dated 28.10.2022 cannot be sustained.

It is also relevant to note that in terms of the Show Cause Notice dated 06.10.2022, the petitioner's GST Registration was proposed to be cancelled solely for the reason that the petitioner had not responded to the summons issued under Section 70 of the CGST Act. The petitioner had explained that her accountant had visited the office and had sought an adjournment to prepare the documents. The Order-in-Original dated 28.10.2022 does not indicate that the said contention was considered.

The cancellation of the GST Registration of a taxpayer has wide implications for the taxpayer and has the propensity of bringing the taxpayer's business to a standstill. It could never be the intention of the legislature to exclude persons from carrying on legitimate business. Thus, the measure of cancellation of GST must be exercised only in cases, where it is necessary.

Therefore, the impugned Show Cause Notice dated 06.10.2022, the Order-in-Original dated 28.10.2022 and the Order-in-Appeal dated 30.05.2023 were set aside.