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Judgment No.: 131
Dt.: 22-05-2024



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Judgment Deals With

Section/Rule	Section 29
Authority	Madras High Court
Case Name	Jones Diraviam VS The Commercial Tax Officer
Dated	27 th March, 2024

Brief Facts of the Case:

The petitioner has failed to submit his returns and therefore, his GST registration was cancelled by Department vide order dated 15.02.2024. The petitioner filed an appeal with a delay of 260 days, but it was rejected.

Contention of the Petitioner:

The petitioner was unaware of the notice issued for non-filing of the returns and further due to his inadvertent oversight he failed to submit his reply. In view of the cancellation of registration, he is not in a position to do his business and his livelihood is affected.

Findings & Decision of the Court:

The provisions of GST enactment cannot be interpreted so as to deny right to carry on Trade and Commerce to any citizen. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of shortcomings in the scheme of GST enactment. The right to carry on trade or profession cannot be curtailed contrary to the constitutional guarantee under Article 19(1) (g) and Article 21 of the Constitution of India. If the person like petitioner is not allowed to revive the registration, the state would suffer loss of revenue and the ultimate goal under GST regime will stand defeated. The petitioner deserves a chance to come back into GST fold and carry on business in legitimate manner. There is one more aspect as far as the issue regarding limitation in filing the appeal under Section 107 of MGST Act is concerned. Indeed the Deputy Commissioner of State Tax has no power to condone the delay beyond 30 days. But then one cannot overlook the aspect of provisions stipulating limitations. Since it is merely a matter of cancellation of registration, the question of limitation should not bother Department since it cannot be said that any right has accrued to the State which would rather be adversely affected by cancellation. In this regard, a reference can be made to the **judgment of the Supreme Court in the case of Mafatlal Industries Ltd. Vs Union of India reported in (1997) 5 SCC 536**. The supreme court observed that the jurisdiction of the High Court under Article 226 of the Constitution of India or Supreme Court under Article 32 cannot be restricted by the provision of any Act to bar or curtail remedies. Since his statutory appeal suffered dismissal on technical ground, the Court cannot allow the situation to continue. It would be appropriate to exercise jurisdiction under Article 226 of the Constitution of India. It is not in the interest of the government to curtail the right of the entrepreneur like petitioner. The petitioner is a contract supplier. Most of the small scale entrepreneurs like carpenters, electricians, fabricators etc. are almost uneducated and they are not accustomed with handling of e-mails and other advance technologies. The object of any Government is to promote the trade and not to curtail the same. The cancellation of registration certainly amounts to a capital punishment to the traders, like the petitioner. By applying the above ratio, the writ petition was allowed and impugned order was set aside.

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