

ITC can be claimed during revocation of cancelled GST registration

The Hon'ble Rajasthan High Court in ***M/s R.K. Jewelers v. Union of India [D.B. CWP No. 4236 of 2023 dated April 26, 2023]*** has held that, the cancellation of registration effected on the ground of non-filing of GST return, could be revoked and the assessee can claim Input Tax Credit (“ITC”) when the department considers the issue of revocation of such cancelled GST registration. Further held that, the assessee shall be entitled to lodge its claim for avilment of ITC in respect of the period from the cancellation of the GST registration till the GST registration is restored.

Facts:

This petition has been filed by M/s R.K Jewelers (“**the Petitioner**”) challenging the order dated February 02, 2022 (“**the Impugned Order**”) passed by the Appellate Authority, Commercial Tax, Jodhpur, (“**the Respondent**”), whereby the GST registration of the Petitioner was cancelled on the ground of non-filing of GST return. Further, an appeal was filed by the Petitioner against the Impugned Order which was also rejected by the Appellate Authority.

Being aggrieved this petition has been filed.

Issue:

Whether ITC can be claimed during revocation of cancelled GST registration?

Held:

The Hon'ble Rajasthan High Court in ***D.B. CWP No. 4236 of 2023*** has held as under:

- Observed that, a notification dated March 31, 2023 had been issued and as per the said notification, on the conditions being fulfilled, the cancellation of registration effected on the ground of non-filing of GST return, could be revoked.

- Opined that, the Petitioner is covered under the notification dated March 31, 2023 and the Petitioner can move an application before the competent authority with a prayer for restoration of its GST registration subject to fulfilment of the specified conditions.
- Directed the Petitioner to file an application for restoration of its GST registration before the competent authority, which shall consider and decide the application filed by the Petitioner in the light of the notification dated March 31, 2023.
- Further clarified that, when the competent authority considers the issue of revocation of cancellation of Petitioner's GST registration, the Petitioner, shall be entitled to lodge its claim for availment of ITC in respect of the period from the cancellation of the registration till the registration is restored.

Relevant provision:

Section 30 of the Central Goods and Services Tax Act, 2017 ("the CGST Act"):

"Revocation of cancellation of registration.

30. (1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in such manner, within such time and subject to such conditions and restrictions, as may be prescribed.

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).

(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of 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 revocation of cancellation of registration under this Act.”

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