

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.5172 OF 2021

Goods and Services Tax Practitioners' Association
and another ... Petitioners
Vs.
Union of India through its Revenue Secretary
and others ... Respondents

Mr. P. C. Joshi a/w. Ms. Nikita Badheka, Mr. Parth Badheka and Ms. Lata Nagal for Petitioners.

Mr. Anil Singh, Additional Solicitor General a/w. Mr. Pradeep S. Jetly, Senior Advocate, Mr. J. B. Mishra and Mr. Devesh Tripathi for Respondent Nos.1 and 3.

Ms. Jyoti Chavan, AGP for Respondent No.2-State.

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**

DATE : FEBRUARY 26, 2021

P.C. :

Heard Mr. P. C. Joshi, learned counsel for the petitioners; Mr. Anil Singh, learned Additional Solicitor General along with Mr. P. S. Jetly, learned senior counsel, Mr. J. B. Mishra and Mr. Devesh Tripathi, learned counsel for respondent Nos.1 and 3; and Ms. Jyoti Chavan, learned AGP for respondent No.2-State.

2. Goods and Service Tax Practitioners' Association, Mumbai and its President Shri. Raj Pravin Shah as the petitioners have preferred the present writ petition under Articles 226 / 227 of the Constitution of India for a direction to the respondents to extend the periodicity of filing of annual returns in the State of Maharashtra until complete lock-down is lifted or until the covid-19 pandemic situation improves completely. In continuation of the aforesaid prayer, petitioners seek further direction to the respondents to extend periodicity of limitation of filing of annual returns for the year 2019-20 in the State of Maharashtra under section 44

of the Central Goods and Services Tax Act, 2017 read with Rule 80 of the Central Goods and Services Tax Rules, 2017 upto 30.06.2021.

3. It is submitted that in terms of section 44 of the Central Goods and Services Tax Act, 2017 (briefly 'the CGST Act' hereinafter) and rule 80 of the Central Goods and Services Tax Rules, 2017 (briefly 'the CGST Rules' hereinafter), every registered person is required to file annual return for every financial year in the electronic form before 31st day of December following the end of such financial year. In the case of the financial year 2019-20, the date for filing such annual return was 31.12.2020. By notification No.95/2020 dated 30.12.2020, the time-limit for furnishing such annual return for the financial year 2019-20 was extended till 28.02.2021.

4. It has been averred in the writ petition that covid-19 pandemic particularly in the State of Maharashtra is not yet over. Rather in recent days, there has been an increase in the number of cases of people being infected with covid-19. Lock-down imposed in the State of Maharashtra has not yet been completely withdrawn. As a matter of fact, several areas in the State of Maharashtra have seen fresh lock-downs in different forms in the recent past.

5. It is further submitted that filing or furnishing of annual return is dependent upon finalization of audit report under the Income Tax Act, 1961. Though the date for finalization of audit report under the Income Tax Act, 1961 is 30th day of September of the preceding year, for the financial year 2019-20 the due date under the Income Tax Act, 1961 was extended upto 15.01.2021. In other words, Chartered Accountants responsible for furnishing annual returns under the CGST Act would have less than 45 days after finalization of audit report under the Income Tax Act, 1961 to file annual return under section 44 of the CGST Act.

6. Because of the aforesaid reasons, petitioners had represented

before the Grievance Redressal Committee, Pune on 08.01.2021. Finding no response, they made a further representation to the Goods and Services Tax (GST) Council on 11.02.2021. As no decision was forthcoming, present writ petition has been filed seeking the reliefs as indicated above.

7. Mr. Joshi, learned counsel for the petitioners submits that following amendment to section 44 of the Maharashtra Goods and Services Tax Act, 2017, a *proviso* has been inserted therein as per which the Commissioner may on the recommendation of the GST Council and for reasons to be recorded in writing by a notification extend the time-limit for furnishing the annual return for such class of registered persons as may be specified therein. Further, any extension of time-limit notified by the Commissioner of Central Tax shall be deemed to be notified by the Commissioner under the Maharashtra Goods and Services Tax Act, 2017. He further submits that there is no involvement of revenue in the matter as extension of time limit would not result in loss of any revenue. Looking into the genuine hardship faced by the members of petitioner No.1 and taxable persons, he submits that such discretionary power is required to be exercised by the Commissioner in the interest of justice. He has also referred to section 168A of the Maharashtra Goods and Services Tax Act, 2017 to contend that such extension of time-limit should be allowed if furnishing of annual returns within the extended time-limit upto 28.02.2021 cannot be completed or complied with due to *force majeure*, which has been explained to mean epidemic etc., in this case covid-19.

7.1. He has also referred to the judgment of the Rajasthan High Court dated 05.02.2020 in the case of *Tax Bar Association Vs. Union of India* wherein a Division Bench of Rajasthan High Court had directed that Tax Bar Association and the assesseees represented by the Association may keep uploading their returns for which no late fee would be charged till 12.02.2020. It may be mentioned that the litigation before the Rajasthan

High Court pertained to extension of time for the financial year 2017-18 on account of non-functioning of GSTN portal.

8. Mr. Singh, learned Additional Solicitor General has referred to and relied upon written instructions dated 25.02.2021 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing and addressed to the Commissioner, Central Goods and Services Tax, Mumbai South Commissionerate. He submits therefrom that the government has been considerate of the difficulties faced by the tax payers due to covid-19 pandemic and accordingly, the due date for filing annual returns and reconciliation statements has been extended. Timeline for filing such return and statement for the financial year 2019-20 has already been extended from 31.12.2020 to 28.02.2021 considering the difficulties faced by the tax payers. It is stated that annual return prescribed under section 44 of the CGST Act is not a new compliance; rather is a reconciliation of GST returns filed by the tax payer. Audit being an important compliance-verification tool in self-assessment regime, effectiveness of tax administration would be compromised if the due date for filing these returns is extended repeatedly. Referring to the Rajasthan High Court judgment, Mr. Singh submits that the portion of the order of the Rajasthan High Court which had extended the deadline for submitting returns has been stayed by the Supreme Court in S.L.P. No.3839 of 2020 *vide* order dated 10.02.2020.

9. Ms. Chavan, learned AGP submits that State of Maharashtra has no independent say in the matter. Referring to section 44 of the Maharashtra Goods and Services Tax Act, 2017, she submits that the Commissioner can extend the time-limit only upon recommendations made by the GST Council. On his own, he cannot extend the time-limit. GST Council's views have been expressed by Mr. Singh. Therefore, there is no possibility of extension of time-limit by the Maharashtra Commissioner.

10. Submissions made by learned counsel for the parties have received the due consideration of the Court.

11. On due consideration, we are not inclined to accede to the prayer made by the petitioners that too at this eleventh hour. It is not that the time-limit has not been extended. The initial due date of 31.12.2020 has been extended to 28.02.2021. That apart, on going through the relevant provisions of the CGST Act, more particularly the provision of section 47(2) thereof, we do not find that non-extension of the time-limit beyond 28.02.2021 would lead to any extinguishment of right. We find from the written instructions dated 25.02.2021 that *vide* notification No.77 of 2020 - Central Tax dated 15.10.2020 filing of annual return in the prescribed form for businesses with annual turnover upto Rs.2 crores has been made optional for the financial years 2017-18, 2018-19 and 2019-20; and for businesses with annual turnover upto Rs.5 crores filing of the prescribed form for the financial years 2018-19 and 2019-20 has been waived off *vide* notification No.79/2000 - Central Tax dated 15.10.2020. We also take note of the fact that it is the professional body of GST practitioners who are before us and not any individual taxable person expressing any difficulty in adhering to the extended timeline of 28.02.2021.

12. In the circumstances, Court is not inclined to entertain the writ petition. Writ petition is accordingly dismissed.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

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