

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11833 OF 2022

Rohit Enterprises (Reg. no. 27AHQPD2485F1Z7)

Through its proprietor,

Changdeo Punjaji Deokar,

Age 56 yrs. Occ. Business,

r/o Bajaj Nagar, RN 18/5

Jai Yogeshwar Housing Society,

MIDC Waluj, Gangapur,

Aurangabad-431136

...Petitioner

Versus

1. The Commissioner
State GST Bhavan,
Railway Station Road
Aurangabad.

2. The Dy. Commissioner,
State Tax (Appeal)
Aur.-VAT-E-001,
Railway Station Road, Aurangabad.

3. The State Tax Officer,
Aurangabad
Railway Station Road, Aurangabad

...Respondents

Mr Alok Sharma, Advocate for Petitioner

Mr A.S. Shinde, AGP for Respondent Nos. 1 to 3/State

**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 31-01-2023
PRONOUNCED ON : 16-02-2023**

JUDGMENT : (PER S.G. CHAPALGAONKAR, J.)

1. Rule. Rule is made returnable forthwith. The petition is heard finally,
with the consent of the learned counsel for the parties.

2. The petitioner approaches this Court under Article 226 of the Constitution of India with following prayers :-

- (B) *That the order passed in Appeal no. DC/APP/E-001/ABAD/GST/323/2022-2023 Dy. Commissioner (Appeal) Aurangabad may kindly be quashed and set aside.*
- (C) *That the order passed by the State Tax Officer dt. 14.3.2022 of cancellation of registration may kindly be quashed and set aside.*
- (D) *That, the order dt. 28.2.2022 passed by the State Tax Officer suspending the registration w.e.f. 28.2.2022 may kindly be quashed and set aside.*
- (E) *That, the Hon'ble High court may kindly hold that, the petitioner registration no.27AHQPD2485F1Z7 is valid from 28.2.2022 onwards.*

3. The petitioner is a proprietary firm engaged in the business of fabrication work. It is registered under the Central Goods and Services Tax Act, 2017 (**GST Act**) as well as Maharashtra State Goods and Services Tax Act, 2017. The certificate of registration dated 20-07-2018 has been issued to his firm with registration No. 27AHQPD2485F1Z7. Petitioner contends that since he had undergone angioplasty, and the firm suffered financial set back in pandemic situation, GST returns from August 2021 could not be filed. Section 29(2) of the GST Act enables proper officer to cancel registration if registered person / firm fails to furnish three consecutive returns. The State Tax Officer, Aurangabad issued a show cause notice dated 28-02-2022 calling upon the petitioner to furnish his explanation within a period of 7 working days. The notice stipulated that the registration of the petitioner stood suspended. The petitioner replied the show cause notice on 03-03-2022. Citing the reason of the financial

crunch, he requested for revocation of the notice. However, the State Tax Officer vide order dated 14-03-2022 cancelled the registration with effect from 21-08-2021.

4. The petitioner requested for revocation of the cancellation of registration. In response, the State Tax Officer issued show cause notice for rejection of the application. The petitioner was called upon to furnish the reply within 7 days along with supporting documents like bank statement till the date of the notice, challan of tax, interest and late filing penalty. The matter was taken up for hearing on 25-04-2022. Finally, the State Tax Officer rejected the application of petitioner seeking revocation of cancellation vide order dated 17-05-2022.

5. The petitioner filed appeal under section 107 of the Maharashtra Goods and Service Tax Act, 2017 challenging cancellation of registration. It was registered as Appeal No. DCST/Apl./E-001/GST-Revocation/2022-2023/B-619. The Dy. Commissioner/State Tax (Appeal), Aurangabad Division rejected the appeal on the ground of limitation that the appeal has been submitted beyond the prescribed period provided under section 107 (1) and 107 (4) of the MGST Act, 2017.

6. Mr Alok Sharma, learned advocate appearing for the petitioner submits that the petitioner is the vendor of the Bajaj Auto Limited and earns his livelihood through fabrication business. Due to pandemic situation, the business activities of the petitioner were hampered causing huge financial loss. The petitioner was also unwell. In August 2021, he underwent angioplasty. Mr Sharma would further submit that petitioner

could not submit his GST returns during the relevant period and suffered cancellation of the registration. He would submit that the petitioner had approached the appellate authority challenging cancellation of the registration. However, his appeal came to be rejected on technical grounds as it was time barred. The appellate authority is not vested with the powers to condone delay of more than 30 days as per section 107 of the GST Act. The petitioner would not be in a position to continue his business in absence of registration and would face starvation. He would urge this Court to exercise jurisdiction under Art. 226 of the Constitution of India to protect the fundamental right guaranteed under Art. 19 and 21 of the Constitution of India in favour of the petitioner.

7. Mr A.S. Shinde, learned AGP supports the impugned order. He would submit that the petitioner was given reasonable opportunity before cancellation of the registration. The show cause notice was issued to him on 28-02-2022 along with order of suspension of registration. The petitioner was further given opportunity to furnish the documents while dealing with his application for revocation of cancellation of registration. The petitioner failed to avail the opportunity, consequently suffered the order of rejection of the application for revocation of cancellation of registration. He would further point out that petitioner failed to file appeal within prescribed period of limitation under section 107(4) of the GST Act, 2017. The appellate authority has rightly dismissed the appeal which was apparently barred by limitation. The petitioner has already availed statutory remedy. Hence, he is not entitled to invoke extraordinary jurisdiction of this Court under Art. 226 of the Constitution of India.

8. We have considered the submissions advanced by both the sides. It appears that the petitioner was earning his livelihood through his fabrication business and requires registration under GST Act to run the business. The entire world suffered during the pandemic. The small scale industrialists and service providers like petitioner lost their business for more than two years. The financial losses suffered during this time cannot be ignored particularly when it comes to small scale businesses and service providers. To add apathy to this situation, the petitioner suffered medical emergency. He was required to undergo medical treatment for heart disease and the procedure like angioplasty. The stringent provisions of GST Act took its own course. The petitioner suffered cancellation of registration. Even he lost his appellate remedy because of lapse of limitation. The petitioner has been practically left remediless. He seeks to invoke jurisdiction of this Court under Art. 226 of the Constitution of India.

9. In our view, the provisions of GST enactment cannot be interpreted so as to deny right to carry on Trade and Commerce to any citizen and subjects. 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 Art. 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 his business in legitimate manner.

10. 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 Commissiosner of State Tax has no power to condone the delay beyond 30 days. But then one cannot overlook the aspect of provisions stipulating limitations. The objective is to terminate the lis and not to divest a person of the right vested in him by efflux of time.

11. Since it is merely a matter of cancellation of registration, the question of limitation should not bother us since it cannot be said that any right has accrued to the State which would rather be adversely affected by cancellation.

12. 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 Art. 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. True that while exercising the constitutional power, the Court would certainly take note of legislative intent manifested in the provisions of the Act and would exercise jurisdiction consistent with the provisions of enactment. The constitutional Courts in exercise of such powers cannot ignore law nor can it override it.

13. Applying the aforesaid guidelines to the facts of the present case, we find that the petitioner, who is sufferer of unique circumstances resulting from pandemic and his health barriers, would be put to great hardship for want of GST registration. The petitioner who is small scale entrepreneur cannot carry on production activities in absence of GST registration. Resultantly, his right to livelihood would be affected. Since his statutory appeal suffered dismissal on technical ground, we cannot allow the situation to continue. We find that, in the facts and circumstances of this case it would be appropriate to exercise our jurisdiction under Art. 226 of the Constitution of India.

14 Even looking to the object of the provisions under GST Act, it is not in the interest of the government to curtail the right of the entrepreneur like petitioner. The petitioner must be allowed to continue business and to contribute to the state's revenue. The learned advocate for the petitioner has submitted before us that the petitioner is ready and willing to pay all the dues along with penalty and interest as applicable. In the light of the above submission, we are inclined to allow the writ petition as under :-

- (i) The writ petition is allowed.
- (ii) The order dated 28-02-2022 suspending the GST registration, the order dated 14-03-2022 cancelling GST registration of the petitioner passed by the State Tax Officer and the order dated 21-10-2022 passed by the Dy. Commissioner of Tax, Aurangabad (Appeal) No.DC/APP/E-001/ABAD/GST/323/2022-2023 are quashed and set aside.

- (iii) We hold and declare that the registration No.27AHQPD2485F1Z7 in the name of the petitioner is valid, from 28-02-2022 onwards subject to the condition that the petitioner files up to date GST returns and deposits entire pending dues along with applicable interest, penalty, late fees in terms of Rule 23 (1) of MAST Rules, 2017.
- (iv) The Rule is made absolute in above terms.

[S. G. CHAPALGAONKAR, J.]

[MANGESH S. PATIL, J.]

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