IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4541 OF 2023

Ashok Kumar Vishwakarma ...Petitioner
Versus
Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue & Ors. ...Respondents

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Mr. Nirmal Pagaria for the Petitioner.

Ms. Jaymala Ostwal a/w. Mr. Siddharth Chandrashekhar for Respondent Nos.1 and 4.

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CORAM : G. S. KULKARNI, JITENDRA JAIN, J.J.

DATE : 7th AUGUST, 2023.

P.C.

. This petition under Article 226 of the Constitution of India, praying for the following substantive relief:-

> *"(a) This Hon'ble Court be issue any appropriate writ or order or direction under Article 226 of the Constitution of India, 1950 thereby calling for the relevant records and proceedings from the office of respondent no.3 to 4 and after going through the same, quash and set aside order dated 23.1.2023 thereby rejecting appeal of Petitioner under Section 107 of the Central Goods and Service Act and order dated 4.5.2022 passed by Respondent no.4 under Section 29 of the Central Goods*

and Service Act and restore GST Registration of Petitioner."

2. The primary grievance of the Petitioner is that the Petitioner's registration as granted under the provisions of the Central Goods and Service Tax Act, 2017, has been cancelled by the concerned authority, namely, the Superintendent, CGST and Central Excise, Bhiwandi by an order dated 4th May 2022, which according to the Petitioner, is in breach of the principles of natural justice. It is the case of the Petitioner that on 13th April 2022, the show cause notice for cancellation of registration was issued without furnishing any documents merely on a statement that the Petitioner's registration was liable to be cancelled for the following reasons.

> *"Issue any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax."*

3. It is the Petitioner's case that the details in support of such grounds were not furnished to the Petitioner. The Petitioner had responded to the said notice by an email dated 14th April 2022, requesting for time to submit reply and appear before the concerned officer on 16th May 2022, since he was not in town during such period and further requested that the status quo be maintained. It appears that the concerned officer did not notice

such email as addressed by the Petitioner and proceeded to pass an order dated 4th May 2022, cancelling the registration of the Petitioner. Admittedly no hearing was granted to the Petitioner. However, the order of cancellation has mechanically referred that the Superintendent had examined the Petitioner's reply and submissions made at the hearing and accordingly was of the opinion that the registration is liable to be cancelled.

4. Learned counsel has submitted that *ex-facie* the impugned order dated 4th May 2022, passed by the Superintendent, Bhiwandi, 601, cancelling the Petitioner's registration is bad and illegal being in breach of the principles of natural justice, as no hearing was granted to the Petitioner, no documents were furnished to the Petitioner, as also it records totally incorrect position that the Petitioner was heard.

5. Being aggrieved by the cancellation order dated 4th May 2022, the Petitioner approached the Appellate Authority invoking the provisions of Section 107 of the CGST Act. In the Appeal, the Petitioner had raised a specific ground in regard to the order dated 4th May 2022, being in breach of principles of natural justice. Our attention is drawn to such grounds being ground Nos.E and F of the appeal.

6. Learned counsel for the Petitioner submits that despite a clear case pleaded in the grounds as set out in the appeal memo before the Appellate Authority, proceeded to pass the impugned order dated 23rd January 2023, whereby the appeal filed by the Petitioner has been dismissed. It is submitted that from the discussion and findings as contained in paragraph nos.8 to 13 of the impugned order passed by the Appellate Authority (the Commissioner of GST & Central Excise, Appeals-Thane, Mumbai), none of the grounds as urged by the Petitioner in the appeal memo have been considered, much less the ground on the order of cancellation of the registration being per se illegal and contrary to the provisions of Section 29(2) of the CGST Act.

7. It is next submitted that the Appellate Authority has taken into consideration the Range Officer's report to come to a conclusion tax short paid was amounting to Rs.75,31,476/- for the period July 2017 to January 2022 as also that the Petitioner had availed excess ITC of Rs.27,46,388/- for the said period and which was liable to be reversed along with interest and penalty as applicable. It is also observed in the impugned order that the Divisional Deputy Commissioner had reported that the registration of the Petitioner's suppliers were also cancelled as per the directions issued from the Anti Evasion wing of Bhiwandi Commissionerate as they were carrying out investigation against

the tax payer for availment of non-genuine ITC to the tune of Rs.2,57,51,193/- from non-existing supplier on the basis of fake invoices issued by them and the said credit amounts reflected in their GSTR-2A being availed by them in their GSTR-3B returns, which was in contravention of Section 16 of the CGST Act, 2017 read with the provisions of the Maharashtra GST Act, 2017.

8. Learned counsel for the Petitioner would submit that on these observations, however, no document was furnished to the Petitioner, so as to meet such case of the department and accordingly, the order passed by the Appellate Authority also cannot be set to be legal and would also be in the breach of principles of natural justice.

9. On the other hand, learned counsel for the Respondents-Revenue would support the impugned order. She has submitted that this is a case where the Petitioner had wrongfully availed the ITC from the suppliers were also under investigation and whose registration was cancelled. There were several documents on record to this effect and the Petitioner has complete knowledge of all these facts and circumstances. She would submit that the Petitioner would not be correct in these circumstances to invoke the jurisdiction of this Court and more particularly when the tax liability be paid by the Petitioner is of a substantial amount. She

has drawn our attention to the reply affidavit filed on behalf of the department.

10. Having heard learned counsel for the parties and having perused the impugned orders and the record, we are of the opinion that there is much substance in the contention as urged on behalf of the Petitioner. Insofar as the breach of the principles of natural justice, we may note from the show cause notice that no documents were furnished to the Petitioner in support of the sole ground which we have extracted hereinabove. The Petitioner had sought for an adjournment that he was not available in the town, by his email dated 14th April 2022 and that the proceedings be kept for hearing on 16th May 2022. However, the Superintendent proceeded to cancel the registration by an order dated 4th May 2022 that too by erroneously recording that the Petitioner was heard and the documents and reply submitted by him was examined, when neither the Petitioner was heard nor any documents were filed by the Petitioner.

11. At this juncture, we need to note that there is a categorical obligation on the authority to grant a personal hearing as contemplated below proviso to Sub-section 2 of Section 29 which provides that the proper officer shall not cancel the registration without giving the person an opportunity of being

heard. We find that there is a clear breach of such mandate of the said provisions of the CGST Act by the present officer in passing the order cancelling the Petitioner's registration.

12. We find that inherent defect/illegality in the impugned order was brought to the attention of the Appellate Authority in the Petitioner's appeal filed by raising the specific ground as noted by us above. However, in the impugned order dated 23rd January 2023, the Appellate Authority has proceeded to overlook such ground and in fact has proceeded on a fresh material, namely, the range officer's report in regard to the short paid tax and other materials in regard to the cancellation of registration of the suppliers of the Petitioner's, as set out in the impugned order. In this view of the matter, in our opinion, the Petitioner would be correct in contending that the Appellate Authority has relied on materials which were never supplied to the Petitioner in rejecting the Petitioner's appeal.

13. In the above circumstances, considering the settled principles of law as also the mandate of the provisions of Section 29(2) of the CGST Act, 2017, we are of the clear opinion that the impugned orders passed by both the authorities are in breach of principles of natural justice.

14. For the reasons as discussed above, the impugned orders, therefore, cannot be sustained and would be required to be set aside ordered accordingly.

15. It is clarified that we have not expressed any opinion on the merits of the contentions of either the Petitioner or the department, as we are of the view that if the department is of the opinion that the registration of the Petitioner needs to be cancelled, it ought to follow the proper procedure in law by issuing fresh show cause notice and granting an opportunity of hearing to the Petitioner and pass appropriate orders in accordance with law.

16. In the above circumstances, we allow this petition by the following order:-

(a) The impugned Order-In-Original dated 4th May 2023, cancelling the Petitioner's GST Registration No.27ATIPV8249F1Z2 is quashed and set aside and also the orders passed by the Appellate Authority dated 23rd January 2023 are quashed and set aside. The consequence of setting aside of the above orders is that registration of the Petitioner be restored within a period of three weeks from today.

(b) We also clarify that it is open to the department to issue a fresh show cause notice and to take further appropriate steps in accordance with law, in the event, the department intends to proceed against the Petitioner for cancellation of the registration.

(c) All contentions of the parties are expressly kept open.

(d) Disposed of. No costs.

[JITENDRA JAIN, J.] **[G. S. KULKARNI, J.]**