

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.665 OF 2023

M/s Mohankar Timber Company

... Petitioner

V/s.

The Union of India and ors.

... Respondents

Mr.Deepak Bapat with Ms.Sonali Bapat, Advocates for the Petitioner.
Mr.Ram Ochani, Advocate for Respondents No.1 and 3.
Ms.Shruti Vyas, "B" Panel Counsel for Respondent No.2.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.
DATE : 22 FEBRUARY 2023.**

P.C.:-

1. By this petition, the Petitioner is challenging Order No.PUNCT-APRIL-ADC-000-379-2021-22 dated 31 January 2022 passed by the Commissioner of Central Tax (Appeals-II), Pune under the GST Act rejecting Petitioner's appeal as not maintainable.

2. The brief facts are that the Petitioner having GSTIN registration No.27ACDPM3243NIZE was issued a show cause notice dated 7 January 2021 for cancellation of registration as Petitioner had not filed returns for a continuous period of six months. After considering the

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reply of the Petitioner, the Petitioner's GSTIN registration was cancelled vide order dated 28 January 2021. An appeal was filed against the order of cancellation of GST registration under section 107 of the GST Act. By the impugned order dated 31 January 2022, although the Commissioner (Appeals) found the appeal to be within the period of limitation, holding that since Petitioner did not approach the jurisdictional CGST authority for revocation of cancellation of registration under section 30 of the Act after issuance of the cancellation order as per the time lines provided under the law, rejected the appeal filed by Petitioner as not maintainable.

3. Learned counsel for the Petitioner has drawn our attention to the decisions of this court in Writ Petition No.5273 of 2022 and in Writ Petition No.11618 of 2022 to submit that this court in similar circumstances has granted an opportunity to the Petitioner therein to file an application before the authority under section 30 of the CGST Act and submit that the same course of action be adopted in the case of the Petitioner herein.

4. We have heard learned counsel for the parties and also perused the petition as well as the reply filed by the Respondents.

5. A perusal of the impugned order clearly indicates that although the Commissioner (Appeals) has relied upon the suo-moto orders of the Supreme Court in respect of the limitation period considered the same and held the same to be within limitation, however, it has held

that the appeal to be not maintainable as the course of action under section 30 was not adopted. We observe from the decisions of this court in

- (i) MSK Electricals vs. The Union of India and Others¹,
- (ii) Shri. Datta Kripa Majur Sahakari Sanstha Ltd. vs. Union of India and Others²,
- (iii) Pragati Distributors vs. Additional Commissioner (Appeals I) and Others³ and
- (iv) Balaji Engineering Works Vs. Union of India⁴

that in similar circumstances this court has granted an opportunity to the Petitioner to file an application before the authority under section 30 of the CGST Act. We therefore do not propose to take any different course of action in the matter. We agree with the observation in the earlier decisions passed in the matters referred to above that if the appellate authority came to a conclusion that Petitioner ought to have filed an application before the authority for revocation, then the authority should have granted an opportunity to the Petitioner to file an application under section 30 which the authority failed to do. As noted above, although the authority observed that the appeal was filed within time and also went to the extent of allowing the appeal, however, instead of directing the Petitioner to file an application under section 30 it has gone ahead and rejected the appeal on the ground of maintainability. Paragraphs No.4 to 7 of the decision of this court in

1 Writ Petition No.5273 of 2022 decided on 2 May 2022

2 Writ Petition No.11618 of 2022 decided on 10 October 2022

3 Writ Petition No.15656 of 2022 decided on 7 February 2023

4 Writ Petition No.5394 of 2022 decided on 4 May 2022

MSK Electricals vs. The Union of India and Others (supra) appropriately reflects this position and are quoted as under:

“4 Upon perusal of the order passed by the Appellate Authority, the Appellate Authority, it appears, did not discuss the matter on merits. Only on the ground that the present Petitioner had an opportunity to comply with the provisions of the regulations / statute and the Petitioner failed to avail of the remedy under Section 30 of the CGST Act for revocation of cancellation of the registration, the Appellate Authority has failed to entertain the appeal. The Appellate Authority, if it came to the conclusion that the Petitioner ought to have filed an appeal before the same Authority for revocation, then ought to have accorded an opportunity to the Petitioner to file an Application.

5 The Appellate Authority, it appears, has condoned the delay in filing the appeal, as the appeal was admitted and heard on merits. However, no decision on merit was given. The appeal was filed on 13th December 2021. Under Section 30, the Application has to be filed within 30 days. The Additional Commissioner or the Assistant Commissioner may extend the time for 30 more days and the Commissioner can extend it for further 30 days.

6 Considering the conspectus of the matter, we are inclined to accord an opportunity to the Petitioner to file an Application before the Authority under Section 30 of the CGST Act.

7 In case the Application is filed by the Petitioner within 15 days from today under Section 30 of the CGST Act before the Authority, the Authority shall

construe the same within limitation and take decision upon the Application on merits, expeditiously.”

6. Considering the above discussion and the conspectus of the matter, we are inclined to afford an opportunity to the Petitioner to file an application to the authority under section 30 of the CGST Act. It is made clear that if an application is made by Petitioner within 15 days from today before the authority under section 30 of the CGST Act, the authority to consider the same and take a decision on merits as expeditiously as possible within a period of three months from today.

7. Writ Petition is accordingly disposed of. No costs.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)

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