**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

21 WRIT PETITION NO. 610 OF 2024

M/S MAHARASHTRA SCRAP

....Petitioner

VERSUS

SECRETARY DEPARTMENT OF REVENUE MINISTRY OF FINANCE, UNION OF INDIA AND OTHERS

.....Respondents

.....

Mr. Venkat Prasad h/for Mr Anand Pravin Raka, Advocate for the Petitioner
Mr. S. K. Tambe, AGP for the Respondents-State
Mr. A. G. Talhar, Advocate for Respondent No. 1
Mr. Dwarkadas S. Ladda, Advocate for Respondent Nos. 3 and 4

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.

DATE : 12th February, 2024

ORDER:

1. This Petition was filed through the E-filing mode on 22.12.2023 for challenging the impugned order dated 29.08.2023. Section 107 pertaining to Appeals and Revision under Chapter XVIII of the Central Goods and Services Tax Act, 2017 enables the filing of an appeal within 90 days. For justifiable reasons, the delay can be condoned only to the extent of a further period of 30 days. Since the Writ Petition was filed on 22.12.2023 through E-filing, the Petition is within limitation.

2. The learned Advocate for the GST department submits that the Petitioner has approached this Court only to evade the pre-deposit.

The learned Advocate refers to the order dated 04.08.2023 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 15594 of 2023 (M/s Vishwanath Traders Vs. Union of India).

3. Having considered the submissions of the learned Advocates for the respective sides, with reference to the impugned order dated 29.08.2023, we find that the Petitioner was served with a notice dated 16.08.2023 specifically granting 7 days time to file a reply and show cause on the point of delay. The Petitioner was also given an opportunity of hearing in person on 21.08.2023 at 11.00 a.m. and submit all documents alongwith evidences as may be desired. The Petitioner was put to notice that if it fails to avail of these opportunities of hearing, the Department would proceed to pass an order. As the Petitioner did not participate in the hearing and did not appear in person and did not submit reply, the impugned order dated 29.08.2023 was passed.

4. Since the Petitioner has preferred this Petition within limitation, though it has not approached the appellate authority which the Commissioner (GST-Appeal), we find that it is an incorrect submissions of the Petitioner that it was not granted any opportunity of hearing. In this circumstance, the issue to the extent of violation of the principles of natural justice, is not in the picture.

5. Considering the law laid down by the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU. Kakinada & Ors Vs. Glaxo Smith Kline Consumer Health Care, (2020) 19 SCC 681,** as the Writ Petition has been filed within limitation, we deem it appropriate to relegate the Petitioner to the appeal forum before the Commissioner (GST Appeal). The learned Advocate for the Petitioner submits on instructions that the appeal will be preferred within seven days and further prays that the appeal may be decided expeditiously. The Email address of the Petitioner is available with the GST Department, for correspondence.

6. In view of the above, **this Petition is disposed off** as withdrawn.

7. Since the Petitioner has approached this Court within limitation, we are relegating the Petitioner to the Commissioner (GST Appeals) on the condition that the Petitioner would file the appeal within seven days from today.

8. The notice of hearing in accordance with the procedure laid down in law would be followed by the Commissioner (GST Appeals) by intimating the schedule of the hearing to the Petitioner through Email. The Petitioner would not take a ground that he did not get an opportunity to read the Email notice or access the Email notice. After the hearing is over, the Commissioner (GST Appeals) would pass a

reasoned order considering all the contentions of the Petitioner, within 30 days from the date of the filing of the appeal.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

JPChavan