



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9832 OF 2024

Shri. Ganesh Majoor Sahakari Sanstha
Ltd. Through its Chairman,
Suresh Piraji Shirale. ... **Petitioner**

VERSUS

1) The Union of India
Through Commissioner,
CGST and Central Excise,
N-5, Town Center, CIDCO,
Aurangabad and others ... **Respondents**

...
Advocate for Petitioner : Mr. Alok Sharma
Advocate for Respondent No. 1 : Mr. D.S. Ladda
A.G.P. for Respondent nos. 2 to 4 : Ms. S.S. Joshi

CORAM : **MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR , JJ.**

DATE : **27.11.2024**

ORDER : (MANGESH S. PATIL, J.)

Heard both the sides finally and perused the papers.

2. The petitioner, which was registered with Goods and Service Tax authority being engaged in the business of supplying labour, is aggrieved by cancellation of its registration by the order of respondent no. 4 dated 13.06.2023, on the ground that as required by Rule 21(d) read with Rule 10A of the Central Goods and Service Tax Act, 2017, the petitioner had not furnished the bank details.

3. The learned advocate for the petitioner submits that a show cause notice for cancellation of the registration dated 31.05.2023, could not be responded to since its chairman had died and no one else was in the know

of the facts. The successor chairman was unaware about it and could get the knowledge after the impugned order was passed. This delayed knowledge, led to delay in petitioner's appeal before the appellate authority on 07.08.2024. However, in the absence of any power in respondent no. 3-appellate authority to condone this much of delay, the petitioner is before this Court.

4. The learned advocate for the petitioner would submit that there is a void in the statutory provisions in entertaining the delayed appeals. The cause beyond the statutory period cannot be considered by the appellate authority. In the light of such absence of power in the appellate authority to condone the delay beyond the period stipulated under Section 107, this Court has consistently addressed the issue in light of the fact that since it is a matter of cancellation of GST registration, the State or the revenue would also be affected adversely and further taking into account the fact that absence of such power in the authority would affect the fundamental right of an individual to carry on the business or occupation, guaranteed under Article 19 (1)(g) of the Constitution of India. This Court has addressed the issue by remitting the matters back to the authorities for considering and deciding the matters on merits, rather than sealing the fate only on the ground of delay.

5. Per contra, the learned A.G.P. submits that in the absence of statutory power, respondent no. 3-appellate authority could not have entertained the appeal. He would cite following decisions of the division benches of this Court :

(1) Sanjeev Suresh Desai Vs. Union of India and Ors. (Writ Petition No. 2876/2021 and 2891/2021 (Principal Seat), decided on 24.06.2024.

(2) M/s. B.T. Ghuge Civil Engineer and Contractor Vs. The Union of India and others (Writ Petition No. 6201/2024)

decided on 04.07.2024.

(3) Rohit Enterprises Vs. The Commissioner, State GST and others (Writ Petition No. 11833/2022) decided on 16.02.2023.

6. The learned A.G.P would oppose the petition on the ground that after service of show cause notice, by the impugned order, the registration was cancelled. There is no illegality since the fact that the bank details were not furnished has been accepted by the learned advocate for the petitioner.

7. We have considered the rival submissions and perused the papers including the orders passed by the division benches (supra).

8. As can be seen, only on the ground that the petitioner had failed to furnish the bank details that the registration has been cancelled by the impugned order.

9. There cannot be a dispute that respondent no. 3-appellate authority has no power to condone the delay beyond the stipulated time in an appeal under Section 107 of the G.S.T. Act. The petitioner's stand that soon after the show cause notice was received, its chairman died, as a ground for belated filing of the appeal is a plausible one. The fact remains that there was delay, which respondent no. 3-appellate authority had no power and jurisdiction to condone.

10. The division benches of this Court in such peculiar state of affairs, noticing that absence of any power in the appellate authority to condone the delay, even in genuine cases, would result in obstruction of the fundamental right guaranteed by the constitution to carry on the business under Article 19(1)(g), have intervened in appropriate cases. In the matter of **Rohit Enterprises (supra)**, it has been demonstrated as to how cancellation of G.S.T. registration would even adversely affect the revenue of the State,

expected such matters to be approached pragmatically. Following **Mafatlal Industries Ltd. Vs. Union of India; (1997) 5 SCC 536**, *inter alia* observing that the jurisdiction of the High Court under Article 226 of the Constitution of India cannot be restricted by the provision of any Act to bar or curtail remedies, had entertained the petition, particularly in light of the fact that the order of cancellation of registration on technicalities could be reconsidered.

11. In light of above, the writ petition is allowed.

12. The impugned order of respondent no. 4 dated 13.06.2023, is quashed and set aside. The appeal preferred by the petitioner before respondent no. 3 stands disposed of. The petitioner shall appear before respondent no. 4 on 02.01.2025. It shall reply to the show cause notice and even furnish the bank details to him and respondent no. 4 shall thereafter take a fresh decision in accordance with law.

13. It is clarified that we have not expressed anything on merits.

(PRAFULLA S. KHUBALKAR J.)

(MANGESH S. PATIL, J.)

mkd/-