IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11251 OF 2024

M/s. Maharashtra Scrap
Represented by its Proprietor
Mr. Shaik Karrar Ahemad
Age : 56 years, Occu. : Business,
R/o : Plot No. 5177, Aurangpur Post,
Nilanga Aurangpur,
Tq. Nilanga, Dist. Latur,
Maharashtra – 413 521 .. Petitioner

Versus

1] Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi – 110 001

2] State of Maharashtra,
Through its Additional Chief Secretary (Finance)
Secretaries Cabin, Main Building,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai – 400 032

3] Commissioner (Appeals),
CGST & Central Excise, Nashik,
Plot No. 155, Sector – 34, NH Jyeshta Vaishaka,
CIDCO, Nashik – 422 008

4] The Joint Commissioner of Central Tax,
Aurangabad CGST Commissionerate,
N-5, Town Centre, CIDCO,
Aurangabad – 431 030

5] Superintendent of State Tax,
Latur 701 Charge, Nanded Division,
GST Bhavan, Gandhi Chowk,
Latur, Maharashtra – 413 512 .. Respondents

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Advocate for petitioner : Mr. Rushikesh P. Totala
DSGI for respondent no. 1 : Mr. A.G. Talhar
AGP for the respondent – State : Mr. Nikhil S. Tekale
Advocate for respondents no. 3 to 5 : Mr. D.S. Ladda

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CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

RESERVED ON : 09 OCTOBER 2024
PRONOUNCED ON : 18 OCTOBER 2024

ORDER (MANGESH S. PATIL, J.) :

Heard both the sides finally at the stage of admission.

2. The petitioner is a proprietary firm and had applied for and was granted GST registration on 20-07-2022.

3. On 06-02-2023, the petitioner was served with a notice in Form GST REG – 17, proposing to cancel the GST registration alleging that it was obtained by fraud. The petitioner submitted necessary response by filing application reference on 11-02-2023 by the order dated 09-06-2023. Respondent no. 5 – Superintendent of State Tax cancelled the registration. The petitioner preferred application for revocation of cancellation on 08-08-2023 together with a prayer for condoning the delay in filing the application. Respondent no. 4 rejected that application for revocation of cancellation by the order dated 29-08-2023.

4. The petitioner challenged that order of respondent no. 4 in writ petition no. 610 of 2024. By order dated 12-02-2024, this Court

relegated him to the appellate authority - respondent no. 3 – Commissioner (Appeals).

5. The petitioner attended the hearing before respondent no. 3 on 07-05-2024. Petitioner was called upon to produce his correspondence with the Chief Secretary (Finance) – respondent no. 2 by 09-05-2024. The petitioner's consultant and the respondent no. 3 situate in Nasik whereas he is a resident of State of Karnataka. He fell ill and on a medical advice took rest and could furnish information to the consultant only on 14-05-2024. When he reached the office of respondent no. 3 – appellate authority, the appeal was already decided, upholding the order of respondent no. 4 dated 23-08-2023.

6. Learned advocate for the petitioner would vehemently submit that there was sufficient and plausible cause for him not to attend the proceeding before respondent no. 3 – appellate authority on 03-05-2024. It was not an enormous delay. He had reached that office on 14-05-2023 but in stead of considering request and the cause being put forth for not applying for revocation of cancellation within the statutory period, the order was passed dismissing his appeal. It is a decision in default and passed *ex parte*. It has caused serious prejudice to him. He was even unable to address the appellate authority. Petitioner's business is the only source of his earning. He was not to gain anything by preferring the application for revoking the

cancellation of registration belatedly. The appellate authority has exceeded the jurisdiction in considering the merits of the application for revocation of cancellation when it was merely a matter for considering if there was sufficient ground for him not to make that application in time.

7. Learned advocate Mr. Ladda for the respondent – revenue would oppose the petition. He would submit that the petitioner was relegated to the appellate authority by laying down a time frame. He was not prompt enough in responding to hearing on the stipulated date and left with no alternative, respondent no. 3 had to pass the order. It cannot be said that it was passed *ex parte*.

8. We have carefully considered the rival submissions and perused the papers including impugned order.

9. At the outset, it is necessary to note that admittedly, the petitioner's application for revocation of cancellation of GST registration was dismissed having been preferred beyond the statutory time limit by respondent no. 4 – Joint Commissioner, CGST. Obviously, therefore, the only issue that could have been gone into and decided by respondent no. 3 – Commissioner who was the appellate authority, was to address and decide as to if there was sufficient and *bona fide* cause

for the petitioner not to apply for revocation of cancellation of registration in time.

10. Besides, respondent no. 4 – Joint Commissioner of Central Tax had passed the following order on the petitioner's application :-

" ***Application Reference Number (ARN): AA270323055528V***

Date 08/08/2023

Order of rejection of application for condonation of delay in filing revocation application of cancellation af registration.

This has reference to your application dated dated 08/08/2023 for condonation of delay of revocation application of cancellation of registration. I have gone through your application, the reply(s) of notices and the other evidences fumished by you, and found that the evidences / reasons placed on record for condonation of delay in filing revocation application of cancellaion of registration is not satisfactory in view of the following

1. This GSTIN was cancelled basing on a letter from State Tax Dept. AC of State Tax, NAN-INV-D-001, Nanded have communicated Investigation findings and ab-initio registration cancellation in letter No.ACST/NAN/INV/D-001/INV/22-23/B-98 dated 19.01.2023. There seems no reply from the applicant to GSTR-3A notice, also. Hence rejected.

Therefore, based on the above facts the condonation of delay application is hereby rejected.

Date: 29/08/2023 *SATISHKUMAR CHANDAN TAKBHAWRE*
Place: MAHARASHTRA *Joint Commissioner*
MHCG0875 "

11. A plain reading of this order would clearly demonstrate that instead of adverting to the cause being put forth and *in spite* of being alive to the fact that the petitioner was furnishing some ground for condoning the delay in filing the revocation application, the application was itself decided on merits which approach is *ex facie* unsustainable. Without even making any reference to the cause for the delay, the

application has been rejected in one line that too making observations touching the merits of the revocation application.

12. Even the appellate authority – respondent no. 3 has apparently repeated the error instead of correcting the one committed by the respondent no. 4 – Joint Commissioner. He has passed an elaborate order touching the merits as to how the cancellation was legal and proper, in spite of taking note of the fact that the prayer for condonation of delay itself was, in fact, not decided by respondent no. 4 – Joint Commissioner on merits. Repeating the same error committed by the Joint Commissioner, the impugned order has been passed without taking into consideration the merits of the petitioner's request for condoning the delay in preferring the application for revocation of cancellation of registration.

13. It is improper for both the authorities not to advert to the cause being put forth and straightaway proceeding to decide the main request for revocation of cancellation of registration, on merits. No wonder, the petitioner, in all probability, must have been taken by surprise.

14. It is pertinent to note that the only reason notified to the petitioner for revoking the registration in the notice served upon him was to the effect that he had obtained registration by practising fraud.

It is totally bereft of any circumstance indicating as to the manner in which the alleged fraud was perpetrated. Considering the fact that fraud is a serious allegation which has to be proved to the hilt, respondent no. 4 - Joint Commissioner would have been more cautious in issuing the show cause notice by giving all the details and circumstances which were considered for drawing the inference about alleged fraud. It would have extended an opportunity to the petitioner to deal with each of the circumstances individually and even collectively.

15. The order passed by respondent no. 4 - Joint Commissioner in the original proceeding and that of respondent no. 3 - Commissioner in the appeal are quashed and set aside. The matter is remitted back to respondent no. 4 - Joint Commissioner.

16. Though the notice was attributing fraud to the petitioner in obtaining registration, the order passed by respondent no. 4 - Joint Commissioner was still cryptic and devoid of even a passing reference to the manner in which petitioner had practised the fraud. The whole exercise undertaken by respondent no. 4 - Joint Commissioner is contrary to the principles of natural justice and violative of the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

17. Surprisingly, respondent no. 3 - appellate authority has fallen in the same trap. In spite of being a statutory appellate authority under section 107 of the Central Goods and Services Act, 2017, it seems to have clearly failed to notice the afore-mentioned bare minimum draping of a quasi judicial proceeding. If it was a matter of cancellation of registration, which is a a drastic action, it was imperative that even the appellate authority should have noted the lapse on the part of respondent no. 4 in serving the show cause notice in a cryptic manner and passing a similar order devoid of any reason.

18. In the light of above, both the orders; one passed by respondent no. 4 - Joint Commissioner and respondent no. 3 - Commissioner in an appeal under section 107 are illegal, perverse, arbitrary and unsustainable in law.

19. Writ petition is allowed partly.

20. The impugned orders are quashed and set aside.

21. The matter is remitted back to respondent no. 4 - Joint Commissioner for taking a fresh decision in accordance with law and on its own merits in the light of the observations made herein-above.

22. The petitioner shall appear before respondent no. 4 - Joint Commissioner on 28 October 2024.

23. Respondent no. 4 - Joint Commissioner shall thereafter extend an opportunity to the petitioner to put up his case and decide his application for condonation of delay on its own merits and if he condones the delay, he shall proceed to decide the petitioner's application for revocation of registration cancellation on its own merits.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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