2024:BHC-AUG:13911-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 WRIT PETITION NO. 393 OF 2024

M/S SAMBHAJI MULTI SERVICES
(Reg.No.27BWPPS0340K1Z4).
Through its Proprietor
Sachin Ratnakar Sonwane,
Age : 38 years, Occ : Business,
R/o Kabra Nagar, Plot No.118,
Garkheda, Aurangabad-431001.

...PETITIONER

VERSUS

1. THE COMMISSIONER
STATE GST BHAVAN,
Railway Station Road,
Aurangabad.

2. The Deputy Commissioner,
State Tax (Appeal),
Aur-VAT-E-001,
Railway Station Road,
Aurangabad.

3. The State Tax Officer,
Aurangabad,
Railway Station Road,
Aurangabad.

...RESPONDENTS

...

Shri Alok M. Sharma, Advocate for the Petitioner.
Shri N.S. Tekale, AGP for Respondent Nos.1 to 3/State.

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

DATE :- 08th July, 2024

ORAL JUDGMENT (*Per Ravindra V. Ghuge, J.*):-

1. Leave to correct prayer clause C. Correction be carried out forthwith.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. At the outset, two aspects are admitted by the parties. Firstly, that the Deputy Commissioner (Appeals), Chhatrapati Sambhajinagar, did not have the jurisdiction to condone the delay caused in filing the GST Appeal and, therefore, the order dated 18.12.2023, cannot be faulted. Secondly, the State Tax Officer suspended the registration of the Petitioner vide order dated 23.01.2023, with effect from 01.01.2022, only on the ground that the Petitioner failed to submit the tax returns for 6 consecutive months.

4. The Petitioner was registered with the GST Authority with the registration number mentioned in paragraph

No.1 of the petition. He was also registered under the Maharashtra Shops and Establishments Act. He had a petty business of recovering loan installments for a few banks like HDFC Bank. In short, he was a Recovering Agent and was providing service to the banks.

5. The Petitioner was registered under the Central Goods and Service Tax Act, 2017 as well as the Maharashtra State Goods and Service Tax Act, 2017. He has registration certificates under both the Acts, which are placed on record.

6. In paragraph No.4 of the petition, the Petitioner has averred that as per Section 29 of the GST Act, a Competent Officer, either on his own motion or on an application filed by a registered person or by his legal heirs, can cancel the registration under the said Act. Section 29(2) enables the Competent Officer to cancel the registration of an entity if a registered person paying the tax has not furnished the returns for three consecutive periods. One period comprises of one month. It is further averred that the Petitioner's service would fall under the Reverse Charge Mechanism (RCM) under which, it is the service recipient who

has to bear the Service Tax on the services availed by him. Hence, even if the Petitioner files returns, he would have to mention the tax payable as NIL. Nevertheless, the returns in form GSTR-3B under the GST Act, is the mandate of law.

7. The Petitioner failed to tender the returns as noted above and was issued with the show cause notice in GST REG-31, dated 11.08.2022. He was called upon to explain as to why his GST registration should not be cancelled purely on account of failing to tender the tax returns for six consecutive months. The Petitioner concedes that no reply was filed on account of his Accountant suffering from Covid-19 related health issues. It is in the absence of the reply that the impugned order dated 23.01.2023 was passed by which, his registration certificate under the MGST Act, was cancelled with effect from 01.01.2022. The order for cancellation of registration indicates the sole reason to be "*whereas no reply to notice to show cause has been submitted*" and "*whereas on the day fixed for hearing you did not appear*". However, the impugned order indicates that there is a 'NIL' demand from the Petitioner. The Petitioner makes a statement that after passing of the impugned order, the Petitioner

has not indulged in any business.

8. The Petitioner places reliance upon the judgment dated 16.02.2023, delivered by a co-ordinate Bench of this Court in Writ Petition No.11833/2022 (***Rohit Enterprises Vs. the Commissioner State GST and others***). Reliance is placed on this judgment since the co-ordinate Bench concluded that though the Registration Certificate may have been cancelled, the Government cannot curtail the right of an individual to conduct any business or profession.

9. The learned AGP representing the Department relies upon the affidavit in reply filed by the Joint Commissioner State GST, dated 09.02.2024 and contends that no fault can be found with the order dated 18.12.2023 passed by the Appellate Authority refusing to condone of the delay caused in filing of an appeal.

10. As recorded in the opening paragraph, the learned Advocate for the Petitioner has conceded that the Appellate Authority does not have the jurisdiction to condone the delay,

since there is no provision by which, the period can be enlarged or the delay could be condoned in the absence of a specific provision. It is contended by the Petitioner that the challenge to the first order passed by the State Tax Officer can be looked into by this Court under the exercise of it's Writ Jurisdiction.

11. The learned Single Judge of the Madras High Court has dealt with a somewhat similar fact situation by the order dated 08.12.2023, passed in Writ Petition Nos.28249 and 27773/2023 (***M/s SMT Ready Mix Concrete vs. Additional Commissioner and another***). We have perused the said judgment, wherein, the learned Single Judge has relied upon the judgment delivered by the Honourable Supreme Court in ***Miscellaneous Application No.665/2021 in SMW (C) No.3/2020), (2021) 18 SCC 250 : 2021 SCC Online SC 949***, wherein, it was concluded as under:-

> *"Therefore, we dispose of the M.A. No. 665 of 2021 with the following directions:-*
>
> *I. In computing the period of limitation for any suit; appeal, application or proceeding, the period from March 15, 2020 till October 2, 2021 shall stand excluded. Consequently, the balance period of limitation remaining as on March 15, 2021, if any, shall become available with effect from October 3, 2021.*

II. In cases where the limitation would have expired during the period between March 15, 2020 till October 2, 2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from October 3, 2021. In the event the actual balance period of limitation remaining, with effect from October 3, 2021, is greater than 90 days, that longer period shall apply.

III. The period from March 15, 2020 till October 2, 2021 shall also stand excluded in computing the periods prescribed under sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or Tribunal can condone delay) and termination of proceedings.

IV. The Government of India shall amend the guidelines for containment zones, to State:

'Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements'."

12. It was concluded in ***M/s SMT Ready Mix Concrete vs. Additional Commissioner*** (supra), that as the intention of the Government is not to curtail the rights of an individual in operating a business, it would be purposeless to keep the Petitioner beyond the bounds of the GST Act and the

GST enactments. If the purpose of the GST registration is only to ensure that just tax is paid faithfully by the business operator and such taxes add to the earnings of the State exchequer, the Petitioner can be permitted to move an application for revocation of the cancellation order.

13. The learned AGP for the Department relies upon the judgment delivered by the learned Single Bench of the Madras High Court dated 07.12.2022, delivered in Writ Petition No.32877/2022 (***Hemasri Enterprises Vs. Appellate Authority and another***), wherein, the concerned Petitioner was permitted to apply for a fresh GST registration.

14. In ***Sanjeev Suresh Desai Vs. Union of India and others***, Writ Petitions No.2876 and 2891/2021, decided by the learned Division Bench of this Court at the Principal Seat (original side) vide the order dated 24.06.2024, it is clearly indicated that if an order of the First Authority is passed on the ground that the concerned tax Assessee did not tender appropriate documents or relevant documents for proper adjudication, an opportunity to tender such documents and

participate in the hearing afresh, could be granted. So also, Section 30 of the Central GST Act, permits revocation of cancellation of registration subject to such conditions as may be prescribed. For ready reference, Section 30 is reproduced as under:-

"Section 30 : Revocation of cancellation of registration

(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in such manner, within such time and subject to such conditions and restrictions, as may be prescribed.

(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act."

15. It is, therefore, undisputed before us that the cause of the Petitioner receiving an adverse order from the State Tax Officer, is on account of the lapse on his part in not submitting

the tax returns for six consecutive months. Reasons could be varied. However, the fact remains that if the impugned order is sustained, the Petitioner would not be in a position to conduct his business and he would then have to move the appropriate Authority for a fresh registration. If the Petitioner can be permitted to seek a re-hearing before the State Tax Officer, subject to certain conditions for the lapse on its part, ends of justice would be met.

16. The case put forth by the Petitioner for not being able to formalize the monthly tax returns, was that his sole Accountant suffered from Covid-19 infection and it is known to all that during such Covid-19 times, even the closest blood relative was not permitted to meet the patient and there are instances when the dead body of a person, who had suffered death due to Covid-19, was not handed over to the relatives and had to be disposed off by the Authorities themselves. It is in these circumstances that token cost of Rs. 5,000/- (Five thousands only), could be imposed upon the Petitioner.

17. In view of the above, **this Writ Petition is partly**

allowed, on the following conditions :-

(a) On the condition that the Petitioner will deposit costs of Rs.5000/- (Five Thousand) with Respondent No.3/ Authority, on or before 01.08.2024, the impugned orders dated 18.12.2023 and 23.01.2023 stand quashed and set aside.

(b) The proceedings are remitted to Respondent No.3/ Authority.

(c) The Petitioner shall appear before Respondent No.3/Authority on 01.08.2024, along with the tax returns of the six months.

(d) Respondent No.3/ Authority would consider the records and by following the due procedure laid down in law, pass an appropriate order on such conditions as the Rules would permit the Authority.

(e) Let this exercise be completed within a period of 45 days.

18. Rule is made partly absolute in the above terms.

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