IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDITION

WRIT PETITION NO.15644 OF 2023

M/s. Red Fox Events and Entertainment … Petitioner
Age 38, GSTIN 27BHHPK8428D2Z8
having its registered address at
A-7, Raghukul CHS Ltd., Opp: MHB Colony,
S. V. Road, Dahisar (E), Mumbai 400 068
GST No. 29AAECC4477E1ZJ

Versus

1 Union of India …Respondents
through the Secretary, Ministry of Finance,
Department of Revenue, North Block,
New Delhi 110 001.

2 The Joint Commissioner (Appeals-Thane)
Thane Commissionerate
12th Floor, B Wing, Lotus Infocentre,
Near Parel Station, Parel (East),
Mumbai 400 012.

3 The Deputy/ Assistant Commissioner,
Div-I, Thane Commissionerate
3rd Floor, Accel House (GST Bhawan)
Plot No.22, Wagle Industrial State,
Thane (W), 400 064.

4 The Superintendent, Range – IV,
Division-I, Thane Commissionerate
1st Floor, Accel House (GST Bhawan)
Plot No.22, Wagle Industrial State,
Thane (W), 400 064.

Mr. Sham Walve a/w. Mr. Ankit Trivedi i/b. India Law Alliance for the Petitioner.
Ms. Megha Bajoria i/b. Karan Adik for the Respondent.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 3 January, 2024

ORAL JUDGEMENT (Per FIRDOSH P. POONIWALLA,J.):-

1. This Petition under Article 226 of the Constitution of India is filed praying for the the following final reliefs:-

> *"a. That this Hon'ble Court be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction calling for the records and proceedings dealing with the Impugned Order dated 14th September 2023 passed by the Respondent No.2 (Exhibit 'F' hereto) in the Petitioner's case and after going into the legality, propriety and validity thereof to quash and set aside the same along with the Rejection Order dated 31st May 2023 (Exhibit 'D' hereto), as the same been passed in violation of principles of natural justice and thereby revoke the GST registration;*
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> *b. That this Hon'ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction directing Respondent No. 2, their servants, subordinates and agents:*
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> > *i. To withdraw the Impugned Order dated 14th September 2023 passed by the Respondent No. 2 (Exhibit 'F' hereto) along with the Rejection Order dated 31st May 2023 (Exhibit 'D' hereto) and thereby restore GST registration;*
> >
> > *ii. To Further direct the Respondents to allow the Petitioner to file subsequent GST Returns;"*

2. The Petitioner is a registered proprietory concerned engaged in Event Management and Hospitality.

3. Respondent No.4 issued an Order dated 17th April 2023 for cancellation of the Petitioner's GST registration under the Central Goods and Services Tax Act, 2017 ("the Act") wherein it was stated that the Petitioner had not filed its 3B returns for more than six months and therefore the GST registration of the Petitioner was cancelled.

4. On 20th April 2023, the Petitioner filed an Application for revocation of the said cancellation of registration. A Show Cause Notice dated 19th May 2023 was issued to the Petitioner calling upon the Petitioner to show cause as to why it's Application for revocation of cancellation of registration should not be rejected for the reasons mentioned in the said Show Cause Notice.

5. It is the case of the Petitioner that, without giving it an opportunity to explain as to why the cancellation of its registration should be revoked, an Order dated 31st May 2023 was passed by Respondent No.3 rejecting the Petitioner's Application for revocation of the cancellation.

6. The Petitioner thereafter filed an Appeal in Form GST APL-01 on 31st May 2023, wherein the Petitioner has stated that, due to unavoidable circumstances, the Petitioner failed to file GST returns on time, and gave reasons as to why its GST registration should be restored at the earliest.

7. Thereafter, by an Order dated 14th September 2023, the Appeal filed by the Petitioner was rejected and the Order dated 31st May 2023 was upheld.

8. It is the case of the Petitioner that, since no Appellate Tribunal has been constituted under the provisions of Section 109 of the Act, the Petitioner has been compelled to approach this Court by filing the present Writ Petition. It is the case of the Petitioner that the present Writ Petition is maintainable as, due to the Appellate Tribunal not having been constituted, it does not have any other alternative efficacious remedy available to it.

9. Mr. Walve, the learned Counsel appearing on behalf of the Petitioner, submitted that the Petitioner, in its Appeal filed on 31st May 2023, had specifically stated that it was unable to file the GST returns due to unavoidable circumstances. Further, as the Department had cancelled the GST registration of the Petitioner w.e.f. 9th March 2023, the Petitioner was unable to file subsequent returns. He submitted that the actions of the Department had rendered the Petitioner handicapped as the Petitioner could not file returns even though it was willing to do so. Mr. Walve further submitted that the Petitioner has, on the present date, complied with the payments and has filed the GST returns up to March 2023. He submitted that there are no more delays from the Petitioner's side and thus the cancelled GST registration of the

Petitioner should be restored in order to enable the Petitioner to file further returns and make all payments.

10. Mr. Walve also submitted that, if the GST registration of the Petitioner is restored, the Petitioner, within a period of four weeks from the date of restoration of the GST registration, would file all the returns up to date and clear all the dues. Mr. Walve vehemently submitted that, in the light of the same, the Petitioner's GST registration ought to be restored.

11. Ms. Bajoria, the learned Counsel appearing on behalf of the Respondents, submitted that, in the event this Court was inclined to restore the GST registration of the Petitioner, this Court ought to direct the Petitioner to file all the pending returns and make all the GST payments within a fixed period of time so as to cause no prejudice to the Revenue.

12. Having heard learned Counsel for the parties and considering the peculiar facts of the case and the nature of the impugned orders and the grievance of the Petitioner that the Petitioner was not adequately heard in the impugned orders being passed, we are of the opinion that as now the Petitioner has regularized the returns upto March 2023 and is also willing to regularize the future returns within four weeks from the date the registration is restored, the Petitioner needs to be granted such an opportunity to undertake filing of the returns for the future period after March 2023.

13. In the aforesaid circumstances, and for the aforesaid reasons, we pass the following orders:-

a. The impugned orders dated 31st May 2023 and 14th September 2023 are hereby quashed and set aside.

b. The Respondents are directed to restore the GST registration of the Petitioner within a period of one week from the date of uploading of this Order.

c. The Petitioner is hereby ordered and directed to file all the GST returns and make all the GST payments within a period of four weeks from the date of restoration of the Petitioner's GST registration.

d. Rule is made absolute in the aforesaid terms.

e. In the facts and circumstances of the case, there will be no order as to costs.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI , J.)**