Pradnya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 500 OF 2024

Sumtinath Trading Private Limited,]
A company registered under the provisions]
of Companies Act,]
having its office at 314, 3rd Floor,]
Plot No.61/63, Shed,]
Kalbadevi Road, Vitthalwadi]
Mumbai – 400 002]...Petitioner

Versus

1] Union of India]
Through Central Govt. Advocates]
Aaykar Bhavan Annexe, 2nd Floor,]
New Marine Lines, Mumbai-400 020.]
]
2] Assistant Commissioner of CGST & C E]
Mumbai South Division – III, Range – V]
13th and 15th Floor,]
Air India Building, Nariman Point]
Mumbai – 400 021.]... Respondents

Mr Brijesh Pathak, for the Petitioner.
Mr Karan Adik a/w Ms Sangeeta Yadav, for the Respondents.

CORAM **M.S. Sonak &**
Jitendra Jain, JJ.
DATED: **18 November 2024**

ORAL JUDGMENT:- *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. Leave is granted to amend the Petition and challenge the remarks/order on pages 95 to 97, annexed to the Respondents' reply—amendment to be carried out immediately.

3. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

4. Typically, we would have relegated the Petitioner to avail of the alternate remedies in such matters. However, this case suggests a failure of natural justice to some extent. Accordingly, we propose to entertain this Petition.

5. The department's portal published a show-cause notice dated 8 June 2023, giving the Petitioner an opportunity to file a reply and attend the personal hearing scheduled for 15 June 2023 at 3:45 p.m. regarding why the Petitioner's GST registration should not be cancelled.

6. The Petitioner claims that it tried to file a reply electronically, but the portal was not geared to accept it. Therefore, it responded to the show-cause notice by filing an explicit reply on 2 November 2023.

7. The Petitioner claims not to have heard anything further in the matter and, therefore, instituted this Petition to challenge the show cause notice itself. In the reply filed on behalf of the Respondents, they have annexed the screenshot of the portal, which suggests that the Petitioner's registration has been cancelled, and this remark was uploaded on the portal/website on 10 January 2024. Therefore, we granted the Petitioner leave to amend the Petition and to challenge this endorsement/remark. There is no evidence of any proper order of cancellation or in any event, communication of this order to the Petitioner. Since the portal refers to remarks, it is possible that the Petitioner was confused about whether this would constitute an order or in any event, a speaking order.

8. However, even the Petitioner is not entirely blameless. The show cause notice dated 8 June 2023 required the Petitioner to file a reply and attend the personal hearing on 15 June 2023. The Petitioner did neither. It was only in November that the Petitioner filed a reply in physical format, adding that it could not have been uploaded to the Respondent's portal earlier.

9. The impugned remarks take no cognisance of the Petitioner's reply filed in the physical format. Since the impugned remarks were uploaded only on 10 January 2024, cognisance should have been taken of the Petitioner's reply. Accordingly, there is a failure of natural justice. However, at the same time, we agree with Mr. Adik that the Petitioner could have been more diligent in the matter.

10. This is an order of cancellation of registration which visits the Petitioner with serious civil consequences. The Petitioner claims to carry out the business of importing and exporting diamonds. In such circumstances, the interest of justice would be met if the impugned remark/cancellation order is set aside and the second Respondent is directed to consider the Petitioner's reply dated 2 November 2023 and decide on the show cause notice dated 8 June 2023 afresh. The Petitioner must also be given a personal hearing. On instructions, learned counsel for the Petitioner states that until the show cause notice is disposed of, the Petitioner will not utilise/duty lapse input tax credit as accumulated in its account. This statement is accepted.

11. This exercise must be completed within three months of the Petitioner paying costs of Rs.50,000/- (Rupees Fifty Thousand only) to Tata Memorial Hospital. The details whereof are as follows :-

Bank Name	:	Central Bank of India
Branch	:	Tata Memorial Hospital
Address, Telephone Number, Fax Number	:	Dr. Ernest Borges Road, Parel Mumbai 400 012. Tel. No.022-24126487, Fax No.022-24126487
Bank Account Number	:	1002449683
Account Type	:	Current
IFSC Code	:	CBIN0284241
MICR Code	:	400016112

12. The costs must be paid to the Tata Memorial Hospital within four weeks from today, and proof of payment/receipt must be produced before the second Respondent within four weeks. Upon receipt of such proof, the second Respondent must fix a date for personal hearing of the Petitioner/its representative and dispose of the show cause notice dated 8 June 2023 by passing a reasoned order and communicating it to the Petitioner. The notice regards personal hearing should be served on the Petitioner by e-mail and not by simply indicating it on the portal.

13. Learned counsel for the Petitioner states that along with proof of payment of costs, the Petitioner will also furnish the e-mail ID to the second Respondent. The documents that the second Respondent has relied upon in the show cause notice must also be furnished to the Petitioner so that the Petitioner can, if necessary, file an additional reply and avail of the opportunity of effective personal hearing.

14. If the costs are not paid within four weeks from today, then this Petition will be deemed to have been dismissed with Rs.10,000/- (Rupees Ten Thousand only) again payable to Tata Memorial Hospital.

15. All contentions on merits are left open since we have not adverted to the merits of the matter.

16. The rule is made absolute to the above extent with costs payable by the petitioner.

(Jitendra Jain, J) **(M.S. Sonak, J)**