



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11541 OF 2024

Om Impex

Proprietor Brijesh V. Shah HUF,
Having office at:
Ground Floor, G-41, Sai Dham
Shopping Plaza Middle Stone,
P. R. Road, Mulund West,
Mumbai Suburban,
Maharashtra – 400 080.

...Petitioner

Versus

1. **The State of Maharashtra**
Through the Secretary,
Ministry of Finance,
Department of Revenue,
Mantralaya, Mumbai – 400 001
2. **The Superintendent of CGST,**
Mulund-East – 702, 16th Floor,
Satra Plaza, Sector-19D, Vashi,
Navi Mumbai – 400 705
3. **The Assistant Commissioner of CGST,**
Mulund-East – 702, 16th Floor,
Satra Plaza, Sector-19D,
Vashi, Navi Mumbai – 400 705
4. **The Commissioner, CGST & C. Ex.**
Navi Mumbai Commissionerate
16th Floor, Satra Plaza,
Sector-19D, Vashi,
Navi Mumbai – 400 705

...Respondents

Mr. Sujit Sahoo for Petitioner.

Ms. S. D. Vyas, Addl. G. P a/w Ms. Dhruti Kapadia, AGP for Respondent
No.1-State.

Mr. Ram Ochani and Mr. Abhishek R. Mishra for Respondent Nos.2 to 4.

CORAM : M. S. SONAK &
JITENDRA JAIN, JJ.

DATED : 8th OCTOBER 2024

JUDGMENT : (Per Jitendra Jain, J.)

1. **Rule.** Rule made returnable forthwith. By consent of the parties, heard finally.

2. This petition under Article 226 of the Constitution of India challenges an order dated 20 February 2024 and an order dated 9 May 2024, whereby the voluntary application for cancellation of registration accepted by the Central Goods and Services Tax (CGST) Authority was revoked, and thereafter, registration was cancelled with effect from 27 June 2020.

Brief facts:-

3. On 28 June 2021, the CGST Authority issued a registration certificate to Respondents in Form GST REG-06. On 9 May 2023, the Petitioner voluntarily applied to cancel the registration in Form GST REG-16. Pursuant to this application, the CGST Authorities cancelled the petitioner's registration effective 8 May 2023.

4. On 20 February 2024, the CGST Authority sent an email to the Petitioner stating that the cancellation order dated 9 May 2023 has been revoked pursuant to the orders received from the Appellate Authority / Higher Authority for restoration of the cancellation order. On the same day, an order was passed rejecting the Petitioner's application for voluntary cancellation of registration dated 9 May 2023.

5. On 26 February 2024, show cause notice was issued by CGST Authorities to the Petitioner to show cause why the registration should not be cancelled on account of the same having been obtained by means of fraud, wilful misstatement or suppression of facts as per Section 29(2)(e) of the Central Goods and Services Tax Act, 2017. The said show cause notice directed the Petitioner to file a reply within 7 days from the service of notice and further directed the Petitioner to appear on 4 March 2024. On 8 March 2024, an order came to be passed for the cancellation of registration with retrospective effect from 27 June 2020.

6. On 20 March 2024, the Petitioner made a representation to the Commissioner CGST wherein the Petitioner objected to the rejection of the Petitioner's application for voluntary cancellation of registration. The Deputy Commissioner of CGST replied to the said letter and stated that the registration cancelled was restored and subsequently cancelled ab initio as directed by the State GST Authorities, and the reasons have

been informed during the course of proceedings relating to the revocation/cancellation to the Petitioner. The said letter also records that the Petitioner did not respond to the show cause notice dated 26 February 2024 in spite of the opportunity of a personal hearing being given. Alongwith said letter, communication of the State GST Authorities dated 18 December 2023 was also enclosed.

7. On 23 April 2024, the Petitioner was informed by CGST Authorities to obtain an NOC from the State GST Authorities for revocation of cancellation of registration. On 9 May 2024, an order rejecting application for revocation of cancellation of registration was passed by refusing Petitioner's request for adjournment.

8. It is on the aforesaid backdrop that the present Petitioner is before us.

9. Mr. Sahoo, learned counsel for the Petitioner, submits that the impugned action of Respondent is contrary to the principles of natural justice since no opportunity of hearing was given before restoration of voluntary cancellation of registration and furthermore, the show cause notice issued for cancellation of registration post such revocation did not specify that the rejection will be cancelled with retrospective effect. Mr. Sahoo further submitted that the Petitioner, being an individual, inadvertently overlooked the email received by which the said show

cause notice dated 26 February 2024 was issued and, therefore, there was no compliance of the said show cause notice. He further submitted that there are series of decisions of this Court and other High Courts taking a view that cancellation cannot be done retrospectively.

10. Per contra, Mr. Ochani, learned counsel for Respondent Nos.2 to 4 submitted that the cancellation has been done at the behest of the State GST Authorities who have found that the Petitioner is engaged in bogus Input Tax Credit (ITC). However, Mr. Ochani does not dispute that prior to revocation of voluntary cancellation of registration, no hearing was granted. He further admits that in the show cause notice it is not stated that the registration will be cancelled with retrospective effect.

11. We have heard the learned counsel for the Petitioner and the Respondents and with their assistance have perused the documents brought to our notice and the replies filed by Respondents.

12. At the outset, we wish to state that we are adjudicating only the decision-making process of Respondents leading to the revocation of voluntary registration cancellation and then cancelling the registration of Petitioner with retrospective effect. We make it clear that we are not examining the merits of the impugned action but the decision-making process leading to the impugned action.

13. There is no dispute that the Petitioner's application dated 9 May 2023 for voluntary cancellation of registration was accepted by Respondents, and the cancellation was made effective from 8 May 2023. After almost 10 months, without giving any hearing or show cause notice for revocation of the voluntary cancellation of registration, Respondents on 20 February 2024 revoked the cancellation on the ground that same is done pursuant to the orders received from Appellate Authority / Higher Authority. Who this Appellate Authority / Higher Authority was or what the order made was nowhere disclosed to the petitioner at that time but much after the cancellation order was made. In our view, it was incumbent upon the Respondents to have issued a show cause notice for revocation of cancellation of registration before passing the order on 20 February 2024. Having not issued any show cause notice, in our view, the restoration of voluntary cancellation of registration is contrary to the principles of natural justice.

14. It is also important to note that Form GST REG-05 dated 20 February 2024, rejecting the application of Petitioner for voluntary cancellation of registration records that, after examining the reply same has been not found to be satisfactory for the "following reasons". However, the said Form does not contain any reasons and the space following the phrase "following reason" which is blank. Therefore, even

on this count, the rejection of the application for voluntary cancellation of registration is contrary to the principles of natural justice since it does not contain any reasons, and the omission is indicative of non-application of mind.

15. Subsequently, the CGST Authorities issued a show cause notice dated 26 February 2024 for registration cancellation. An order was passed on 8 March 2024, whereby the registration was cancelled with effect from 27 June 2020. It is also important to note that registration was granted on 28 June 2021, and if that be so, we failed to understand how the registration came to be cancelled retrospectively from 27 June 2020; there is no explanation by Respondents on this.

16. It is also important to note that when on 20 February 2024 for voluntary cancellation of registration was revoked, reference was made to orders received from the Appellate Authority / Higher Authority. However, it was only on 4th April 2024, that communication from the State GST Authority to the Central GST Authority was given to the Petitioner, on the basis of which registration was cancelled. Therefore, even on this count, before the revocation of cancellation of registration, the Petitioner was not supplied with the documents on the basis of which its application for cancellation of registration was rejected, which is contrary to the principles of natural justice.

17. The CGST Authorities accepted the Petitioner's application for registration cancellation with effect from 8th May 2023. In our view, since the orders revocating registration cancellation on the Petitioner's application were passed contrary to the principles of natural justice, all the subsequent proceedings initiated thereafter, which are consequential, also have to be quashed.

18. The Petitioner should have checked his email when the Respondent sent the show cause notice dated 26 February 2024, which the Petitioner has submitted has been inadvertently overlooked. We do not approve of the Petitioner's conduct on this count. Besides, as indicated earlier, we propose to interfere with the impugned orders only because the decision-making process was flawed and not on the examining the merits. Since this is a case of failure of natural justice, after setting aside the impugned orders, we will have to grant the respondents the liberty to proceed in accord with the law.

19. However, the learned counsel for the respondents expressed an apprehension that the petitioner may utilise the ITC to its credit up to 8 May 2023 and try to render the further proceedings infructuous. In the facts of the present case, the Petitioner will have to be restrained from utilising this ITC for some reasonable period during which the

respondents would have to conclude their proceedings. This would balance the interests of both the parties.

20. In view of the above, we dispose of this petition by passing the following order:-

ORDER

- (i) The Orders dated 20 February 2024, 8 March 2024 and 9 May 2024 passed by CGST Authorities are quashed and set aside.
- (ii) The Position as of 8 May 2023 is restored being the date of acceptance of the application of Petitioner for cancellation of registration.
- (iii) The Respondents are at liberty to proceed by issuing a show cause notice for revocation of cancellation of Petitioner's registration and pass & communicate a speaking order to the petitioner on or before 31 January 2025.
- (iv) The Respondents may also take any other appropriate proceedings in accordance with law for recovery of the demand, if any, and the said proceedings, if taken, should also be concluded on or before 31 January 2025.

- (v) The Petitioners are restrained from utilising any ITC to their credit as of 8 May 2023, till 31 January 2025. The further use of such ITC shall abide by the orders made and communicated by the respondents to the petitioner.
- (vi) The petitioner, if aggrieved, shall have the liberty to challenge the respondent's orders in accordance with the law.
- 21.** The Rule is made absolute in the above terms.
- 22.** The petition is disposed of without any costs order.

[JITENDRA JAIN, J.]

[M. S. SONAK, J.]