IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1048 OF 2024

(Metal Mining Industries Pvt. Ltd., Thr. its Director Shri Abhay Gorle
Vs.
State Tax Officer, State GST Bhavan, Nagpur & Anr.)

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. A.J. Bhoot, Advocate for the Petitioner.
Ms. Payal Bawankule, AGP for the Respondents/State.

CORAM: N.R. BORKAR, J.

DATED : 22nd JULY, 2024

The Petitioner is a private limited Company duly registered under the provisions of the Companies Act. By order dated 27.11.2020, the Respondent No.1 has cancelled the GST registration of the Petitioner. Against the order of Respondent No.1, the appeal was filed before the Respondent No.2. However, the same came to be dismissed on the ground of limitation. Hence this Petition.

2. I have heard the learned Counsel for the Petitioner and learned AGP for the Respondents/State.

3. The learned Counsel for the Petitioner, submits that the Respondent No.1 has cancelled the GST registration due to non-filing of returns for more than six months. It is submitted that, the Petitioner could not file the returns due to Covid-19 induced lock-down.

4. It is submitted that, in identical circumstances this Court in ***Rohit Enterprises Through its proprietor, Changdeo Punjaji Deokar Vs. Commissioner State GST Bhavan and Others, 2023 SCC OnLine Bom 397***, has quashed the order of cancellation of GST registration.

5. On the other hand, Ms. Bawankule, learned AGP for the Respondents/State, submits that as the returns were not filed for more than six months, the show cause notice was issued to the present Petitioner. It is submitted that, no reply was filed and thus registration was cancelled.

6. The fact that there was a Covid-19 induced lock-down, during the relevant period is not disputed.

7. In ***Rohit Enterprises*** (supra), this Court has held:

> *"9. In our view, the provisions of GST enactment cannot be interpreted so as to deny right to carry on Trade and Commerce to any citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of shortcomings in the scheme of GST enactment. The right to carry on trade or profession cannot be curtailed contrary to the constitutional guarantee under Art. 19(1)(g) and Article 21 of the Constitution of India. If the person like petitioner is not allowed to revive the registration, the state would suffer loss of revenue and the ultimate goal under GST regime will stand defeated. The petitioner deserves a chance to come back into GST fold and carry on his business in legitimate manner.*
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> *10. There is one more aspect as far as the issue regarding limitation in filing the appeal under Section 107 of MGST Act is concerned. Indeed the Deputy Commissiosner of State Tax has no power to condone the delay beyond 30 days. But then one*

cannot overlook the aspect of provisions stipulating limitations. The objective is to terminate the lis and not to divest a person of the right vested in him by efflux of time.

11. Since it is merely a matter of cancellation of registration, the question of limitation should not bother us since it cannot be said that any right has accrued to the State which would rather be adversely affected by cancellation.

12. In this regard, a reference can be made to the judgment of the Supreme Court in the case of Mafatlal Industries Ltd. Vs Union of India reported in (1997) 5 SCC 536. The supreme court observed that the jurisdiction of the High Court under Art. 226 of the Constitution of India or Supreme Court under Article 32 cannot be restricted by the provision of any Act to bar or curtail remedies. True that while exercising the constitutional power, the Court would certainly take note of legislative intent manifested in the provisions of the Act and would exercise jurisdiction consistent with the provisions of enactment. The constitutional Courts in exercise of such powers cannot ignore law nor can it override it.

13. Applying the aforesaid gidelines to the facts of the present case, we find that the petitioner, who is sufferer of unique circumstances resulting from pandemic and his health barriers, would be put to great hardship for want of GST registration. The petitioner who is small scale entrepreneur cannot carry on production activities in absence of GST registration. Resultantly, his right to livelihood would be affected. Since his statutory appeal suffered dismissal on technical ground, we cannot allow the situation to continue. We find that, in the facts and circumstances of this case it would be appropriate to exercise our jurisdiction under Art. 226 of the Constitution of India."

8. Considering the overall facts and circumstances, the orders impugned are quashed and set aside, subject to filing of returns and payment of amount due towards GST alongwith interest, penalty and late-fee, if any.

9. The Petition is **allowed** in the above terms.

10. Pending application/s, if any, shall stand disposed of accordingly.

(N.R. BORKAR, J.)

SD. Bhimte

Signed by: Mr.S.D.Bhimte
Designation: PA To Honourable Judge
Date: 13/08/2024 14:50:22