



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

WRIT PETITION NO. 1951/2024

Kloud Data Labs Private Limited and Another
Vs.
Deputy Commissioner of State Tax, Wadi 501 Nagpur

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

Mr. Abhishek Naik, Advocate for Petitioners
Mr. I. J. Damle, AGP for Respondent / State

CORAM: AVINASH G. GHAROTE AND
M.W. CHANDWANI, JJ.

DATED : 05th AUGUST, 2024

The learned counsel for the petitioners does not press challenge to the orders dated 16.02.2022 (page 65) and 17.2.2022 (page 69) and restrict his challenge to the order dated 09.1.2023 (page 56).

2. The petition questions the order under Section 73(9) read with Rule 142 of the Maharashtra GST Act (page 56), whereby the petitioners, have been assessed to GST to the tune of Rs.14,77,371/- for the duration of July, 2017 to March, 2018, on account of purchase made by the petitioners, which includes interest and penalty. The learned counsel for the petitioners submits, that the GST registration of the petitioners was cancelled by an order dated 28.4.2020 (page No.40), which

cancellation was w.e.f. 01.02.2020. The learned counsel for the petitioners submits, that since this order of cancellation, did not indicate that any amount was recoverable from the petitioners on account of MGST or CGST as indicated in the said order, the action initiated under Section 73 of the GST Act read with Rule 142 framed thereunder, was without jurisdiction. He submits, that the order dated 28.4.2020 itself indicates, that the computation as indicated therein, was by considering the earlier returns and, therefore, could not now be reopened. We are unable to agree with the contention for the reason that Sub-section 3 of Section 29 of the GST Act, itself mandates that the cancellation of the registration under Section 29(1) of the Act shall not affect the liability of the person to pay tax and other dues under the Act for any period prior to the date of cancellation, whether or not such tax and other dues are determined before or after the date of cancellation. This would categorically indicate, that the cancellation does not affect the liability of the person liable to pay tax or the entitlement of the Department to recover it. In fact, a perusal of the order dated 28.4.2020 (page 40), itself indicates, that the amounts which were claimed to be determined as being payable which were shown as nil, were without prejudice to any amount that may be found to be payable by the petitioners on submission of final return to be furnished by it. It is further necessary to note, that

the determination as indicated in the order of cancellation dated 28.4.2020, was on the basis of the self assessment, by the petitioners itself. It is, therefore, apparent, that passing of an order under Section 29(1) of the said Act for cancellation of registration, cannot come in the way of the respondent, from determination of any dues payable by the person liable to pay tax, which could also be done post the cancellation. Though **M/s World Steel Tech (India) Pvt. Ltd. Vs. State of Gujarat, Special Civil Application No. 20034/2022, decided on 01.12.2022**, has been relied upon, it would, however, be material to note, that it does not consider the language of Section 29(3) of the GST Act, considering which, it has no applicability in the present matter. We are, therefore, not inclined to accept this submission. The same is rejected.

3. The next ground raised by the petitioners is that the impugned order dated 09.1.2023 (page 56) is bad in law, for denial of an opportunity of hearing, which according to him is reflected on the face of the record, for which, he invites our attention to the notices dated 01.11.2021 (page 41), 14.12.2021 (page 45), 02.12.2022 (page 46) and the screen shot of the GST portal dated 26.02.2024 (page 54).

4. Mr. Damle, learned Assistant Government Pleader supports the impugned order contending, that since no reply was filed by the

petitioners, the question of granting any opportunity of hearing to him did not arise at all.

5. The provision of Section 75(4) of the GST Act 2017 read as under :

“75(1)

(2)

(3)

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.”

6. This would categorically demonstrate, that the principles of natural justice were inbuilt in the statutory provisions itself and mandate an opportunity of hearing, either (1) Where a request in writing is received from the person chargeable with tax or penalty or (2) where any adverse decision is contemplated against such person. Even presuming, that no reply was given by the petitioners, that, however, did not prevent it from justifying the self-assessment for the period July, 2017 to March, 2018, submitted by him to the GST authorities, for which, an opportunity of hearing was necessary. The notice dated 01.11.2021 (page 41), indicates, that no date, time or venue was indicated for personal hearing, on the contrary, it was stated to be not applicable. The subsequent notice dated 14.12.2021 (page 45), 02.12.2022 (page 46) as well

as the screen shot of the GST portal dated 26.2.2024, all depict the same position, considering which, it is apparent, that the requirement of Section 75(4) of the GST Act, 2017 has not been complied with. This being the position, we are not entertaining the plea raised by Mr. Damle, learned Assistant Government Pleader of availability of an appeal under Section 107 of the GST Act available to the petitioners.

7. In the result, the impugned order dated 09.1.2023 is hereby set aside and the matter is remitted back to the respondent, to grant an opportunity of hearing to the petitioners as contemplated by Section 75(4) of the GST Act, 2017.

8. The petitioners shall appear before the respondent on **12th August, 2024**. The respondent shall thereupon proceed to hear the petitioner and decide the matter according to law within a period of 30 days thereafter.

9. The bank guarantee submitted by the petitioners shall be continued for the aforesaid period.

(M.W. CHANDWANI, J.)

(AVINASH G. GHAROTE, J.)