

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1757 OF 2024**

M/s. M.N. Trading Co.

... Petitioner

Versus

The Union of India and Ors.

... Respondents

Mr. Rahul C. Thakar i/b. C.B. Thakar, for Petitioners.

Mr. Saket Ketkar, for Respondent.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

DATED : 08 September 2025

P.C.:-

1. Heard learned counsel for the parties.
2. The Petitioner challenges the order of cancellation of its registration under the Central Goods and Services Tax Act, 2017 issued on 8 June 2022.
3. This Petition was instituted only on 12 January 2024. Within the prescribed period of limitation, the Petitioner neither sought for revocation of the cancellation order nor appealed against the same.
4. The learned counsel for the Petitioner refers to certain difficulties faced by the Petitioner due to domestic reasons and states that the non-filing of an appeal or an application for revocation within the prescribed period of

limitation ought not to come in the Petitioner's way because the Petitioner was now alleging breach of natural justice.

5. The learned counsel pointed out that the show cause notice dated 27 May 2022 had nowhere alleged that the cancellation of registration was proposed with any retrospective effect. However, he pointed out that by the impugned order dated 8 June 2022, the GST registration has been cancelled w.e.f. 4 August 2017, i.e. from the date of its receipt. He relied on the decision of the Delhi High Court in the case of **Aditya Polymers Vs. Commissioner of Delhi Goods and Services Tax and Another**¹ to submit that such retrospective cancellation, without any opportunity to the Petitioner to show cause, would be vulnerable.

6. The learned counsel for the Respondent submitted that the Petitioner, despite receipt of a show cause notice, did not even bother to file any reply. Even after the impugned order was made on 8 June 2022, the Petitioner did not bother to apply for revocation or appeal such order. He submitted that under such circumstances, the Petitioner cannot plead any breach of natural justice.

7. The learned counsel for the Respondent relied on the *Assistant Commissioner (CT) LTU, Kakinada & Ors. vs. M/s. Glaxo Smith Kline Consumer Health Care Limited*² to submit that where a complete mechanism is provided under the Act for challenging orders, that mechanism alone must be

¹ 2023-VIL-292-DEL

² 2020 (19) SCC 681

followed and a writ petition should not be entertained to defeat the statutory scheme.

8. We have considered the rival submissions. We are satisfied that this is not a fit case for entertaining this Petition.

9. Firstly, the Petitioner did not even bother to reply to the show cause notice, which is an undisputed position.

10. Secondly, even after the impugned order was made, the Petitioner did not, within the prescribed period of limitation or even otherwise, apply for revocation or appeal the cancellation order. Only after considerable delay, which also has not been explained, has the Petitioner instituted this Petition, bypassing the alternate statutory remedies available.

11. In the case of *Glaxo Smith Kline (supra)*, the Assessee had instituted an Appeal to challenge the impugned order. However, this Appeal was instituted even after the condonable period prescribed under the statute. Upon dismissal of the Appeal, the Petitioner invoked the remedy under Article 226 of the Constitution of India. This was not allowed by the Hon'ble Supreme Court.

12. The Hon'ble Supreme Court held that where the right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute must only be availed of. Though an Act cannot bar and curtail remedies under Article 226 or 32 of the Constitution, the constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and

would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.

13. The Court held that the powers under Article 226 of the Constitution of India are wide, but certainly not wider than the plenary powers bestowed on the Supreme Court under Article 142 of the Constitution. Even while exercising the powers under Article 142 of the Constitution, the Hon'ble Supreme Court is required to bear in mind the legislative intent and not to render the statutory provisions otiose. This is something that even the Supreme Court cannot do in exercise of its plenary powers under Article 142 of the Constitution. It is thus unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by the Supreme Court would apply on all scores to the exercise of power by the High Court under Article 226 of the Constitution of India.

14. The Hon'ble Supreme Court has also held that the High Court is certainly not free to entertain the writ petition assailing the assessment order if filed beyond the statutory period of maximum 60 days in filing appeal. A similar view is expressed by the Supreme Court in its decision in the case of

*ONGC v. Gujarat Energy Transmission Corporation Ltd.*³ as also by the Co-ordinate Bench of this Court in *Abhuydaya Co-operative Bank Ltd. v. Union of India through Joint Secretary and Ors.*⁴ where the Courts were dealing with the issue of statutory appeal filed beyond the stipulated period and condoning the delay after such prescribed maximum time limit under the statute.

15. In this case, the show cause notice of 27 May 2025 had given the petitioner a clear idea of why the registration was sought to be cancelled. The reason was that the Petitioner was alleged to be issuing invoices or bills without the supply of goods and/or services, leading to wrongful availment or utilisation of input for the refund of tax. Considering the nature of the allegation, the argument that the Petitioner did not expect the registration to be cancelled from the date of its receipt cannot be accepted.

16. Besides, this is also not a case where the Petitioner contested the show cause notice by filing a reply or challenging the allegation in the show cause notice. Having virtually accepted the serious allegations in the show-cause notice about the issue of fake invoices or bills without any backing supplies, the Petitioner cannot complain of any technical breach of natural justice. At least if the Petitioner had contested the allegations, we could have considered the plea or the issue of prejudice.

³ (2017) 5 SCC 42

⁴ 2021 SCC OnLine Bom 6126

17. From the decision of the Delhi High Court in *Aditya Polymers (supra)* such gross facts are not discernible. There is nothing to suggest that it was a case where the Petitioner had not contested the basic allegations in the show-cause notice.

18. Accordingly, in this case, we are unable to accept the argument based on any alleged failure of natural justice. For all the above reasons, we decline to entertain this Petition and dismiss the same without any cost order.

19. At this stage, the learned counsel for the Petitioner points out that pursuant to the investigation carried out by said authorities, the Petitioner has already deposited some amounts towards CGST and SGST. He now submits that if the cancellation is to take effect from 4 August 2017, then the Petitioner would be entitled to a refund of these amounts.

20. The above issue, now raised by the learned counsel for the Petitioner, is not a subject matter involved in this Petition. If the Petitioner thinks that it is entitled to any refunds, it is open to the Petitioner to apply for such a refund. Such an application, if made, will be disposed of by the appropriate authority in accordance with law and on its own merits. At this stage, there is no question of our expressing any opinion on this issue, which does not even arise in this Petition. The Petition is disposed of, with this limited liberty.

(Advait M. Sethna, J)

(M.S. Sonak, J.)