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

WRIT PETITION NO. 5242/2024

Arihant Fabtech India,
A Partnership Firm having its place
of business at Shop No. 109, Grace
Plaza, Priyadarshini Parisar, Nehru Nagar,
Bhilai, Chattisgarh through it's Partner
Shri Utkarsh S/o Ugendranath Jain
arihantfabtechindia@gmail.com

.... **PETITIONER(S)**

// VERSUS //

(1) **State of Maharashtra**,
Through the State Tax Officer,
Wardha 701

(2) **Deputy Commissioner of State Tax**,
State Tax Department, GST Bhavan,
Nagpur, Maharashtra

.... **RESPONDENT(S)**

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Shri Y.A. Kullarwar, Advocate for the Petitioner(s)
Ms. D. Charlewar, AGP for the Respondent/State

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CORAM : M.S. JAWALKAR, J.
FEBRUARY 07, 2025

ORAL JUDGMENT:-

(1) **RULE**. Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

(2) The present Petitioner has challenged the order dated 16/02/2023 passed by the Respondent No. 1 – State Tax Officer, Wardha and the order dated 11/03/2024 passed by the Appellate Authority i.e. Respondent No. 2 – Deputy Commissioner of State Tax, Nagpur and also sought direction to restore his registration of GST bearing No. 27ABMFA3231C1ZV retrospectively and to give all benefits of Input Credit Tax.

(3) Learned Counsel for the Petitioner submitted that he received a Show Cause Notice (Page No. 27, Annexure-IV) wherein he was asked to show cause as to why his registration should not be cancelled. It is also mentioned therein that if he fails to furnish the reply within the stipulated date or fails to appear for personal hearing on the appointed date and time, the case will be decided *ex-parte* on the basis of the available records and on merits. The reason for cancellation of the registration given in the said Show Cause Notice is that "the person did not conduct any of the business provided in declared place of business".

(4) In pursuance to the said Show Cause Notice, the Petitioner filed his reply within time and given his explanation to that effect. The Respondent No. 1 - State Tax Officer, Wardha passed an order for cancellation of registration. While cancelling the registration, it is observed that there is no any permanent place of business at Petitioner's declared place of business. It is further observed that the Petitioner had obtained GST number in Maharashtra by submitting consent letter dated 28/07/2020 signed by Landlord who has already died on 04/03/2019 and thus the Petitioner had obtained registration by providing fraudulent/fabricated record. There is no whisper about this observation or in Show Cause Notice to explain the same. Moreover, after filing of the reply, no date is fixed for granting personal hearing to the Petitioner. This fact is also not considered by the learned Appellate Court i.e. Respondent No. 2 - Deputy Commissioner of State Tax, Nagpur and confirmed the order passed by the Respondent No. 1 – State Tax Officer. In Appeal also, it is wrongly observed that the Petitioner has not mentioned any additional place of business in any other location. Neither there is any office of said Firm nor any legal representative/Authority present at the time of visit.

(5) Learned Counsel for the Petitioner, in support of his contentions, relied on the judgment passed by this Court at Principal Seat in **<u>Writ Petition No. 7506/2023 dated 03/10/2023 (Makersburry India Private Limited vs. State of Maharashtra & others)</u>**. In Paragraph No. 14 of the said judgment, it is held as under:-

> *"14. Having heard learned counsel for the parties and having perused the record, as noted above, we are of the clear opinion that there is much substance in the contention as urged on behalf of the petitioner. At the outset, we may observe that the show cause notice itself was defective, as it did not set out any reasons/grounds which could be responded by the petitioner against the cancellation of the petitioner's registration. The reasons which were furnished, as noted by us, were undoubtedly vague. It is difficult to conceive as to how such contents of the notice could be responded when no reasons to support such allegation were provided in the show cause notice. The order dated 17 October, 2022 passed by the designated officer cancelling the petitioner's registration was inherently defective, as again no reasons were furnished dealing with the case as set out by the petitioner in the reply as filed to the show cause notice. There is no discussion whatsoever on any of the documents. Things did not stop at this, as the appellate authority before*

> *whom all such materials were furnished again proceeded on total non-application of mind of the materials before it. As noted above, several documents although were submitted by the petitioner for consideration of the appellate authority, there is not a semblance of consideration of any of these documents, much less any discussion on these documents so as to consider the case of the petitioner against cancellation of its registration."*

(6) In my considered view, in reply to the Show Cause Notice, the Petitioner has given all the details *viz.* GST and shop numbers etc. At any rate, if liberty of personal hearing would have been granted to the Petitioner, he would have explained everything to the Authorities. I find that the impugned orders cancelling the Petitioner's registration and also rejecting the Petitioner's Appeal are *ex-facie* contrary to the Show Cause Notice issued to the Petitioner and that too without granting any opportunity of hearing to the Petitioner. Moreover, more additional facts of obtaining registration by fraud considered for cancellation of registration of which there was no whisper in the Show Cause Notice. As such, the Petitioner was deprived to meet these charges and defend the same. As such, there is clear violation of principles of natural justice. Hence, both the

impugned orders passed by the Respondents are liable to be quashed and set aside.

(7) Hence, I proceed to pass following order:-

<u>O R D E R</u>

(a) The Writ Petition is **allowed**.

(b) The order dated 16/02/2023 passed by the Respondent No. 1 – State Tax Officer, Wardha and the order dated 11/03/2024 passed by the Respondent No. 2 – Appellate Authority i.e. Deputy Commissioner of State Tax, (NAG-VAT-E001), Nagpur are hereby quashed and set aside.

(c) The matter is remitted back to the Respondent No. 1 – State Tax Officer, Wardha to re-consider its decision in view of the reply to the Show Cause Notice filed by the Petitioner and also by granting opportunity of hearing to the Petitioner.

(d) The suspension order passed, while issuing Show Cause Notice to the Petitioner, is hereby quashed and set aside.

(e) The Petitioner to appear before the Respondent No. 1 – State Tax Officer, Wardha on 27/02/2025.

The Petition stands **disposed of** in the above terms. Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)

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