Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8778 OF 2025

M/s. Noor Timber, through Proprietor ...Petitioner
Vs
The Commissioner of CGST and Central Excise & Anr. ...Respondents

Mr. Pankaj Jain a/w. Mr. Pradeep Purohit i/b. P.D. Jain & Co. for the petitioner.
Ms. Maya Mujumdar a/s. Mr. S.D. Deshpande for the respondents.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.
DATE: 18 MARCH 2026.

P.C.

1. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:

> "a) Issue a writ of Certiorari or any other appropriate writ, order or direction, quashing and setting aside the impugned Order-in-Original dated 03.02.2025 passed by the office of the respondent Agency;
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> b) Issue a writ of Mandamus or any other appropriate writ, order or direction, directing the respondent to conduct a fresh adjudication in accordance with the Order-in-Appeal dated 28.01.2025 passed by the Additional Commissioner (Appeals-II), CGST, Mumbai."

2. Without delving into the merits of the petitioner's contention, it appears from the record that the petitioner had preferred an appeal before the First Appellate Authority, namely, Additional Commissioner (Appeals-II), being aggrieved by the Order-in-Original dated 22 October, 2024, whereby the petitioner's GST registration was cancelled *ab initio*. On such appeal, the Appellate Authority passed an order dated 28 January, 2025 wherein the following orders are passed:

> "11. I find that the appellant has been issued another SCN having no.87/ADC/CGST/MC/AE/2022-23 dated 08.02.2023 and the adjudication of the same is pending. Considering the circumstances of the case, I am of the considered view that it would be appropriate to decide both the SCN's simultaneously by Mumbai Central Commissionerate. Therefore, I remand back the matter to the adjudicating authority in order to provide a fair opportunity to the Appellant to present their defense.
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> 12. I hereby remand back the appeal to adjudicating authority to reconsider the case and to give the appellant a fair opportunity to submit all relevant documents to substantiate their contention before the adjudicating authority, and the claims will be processed as per the provisions and procedure as prescribed under CGST Act, 2017 and CGST Rules, 2017. Keeping all the issues open, the entire matter is remanded for consideration of the case on merits in accordance with law, and needless to say that the case be decided only after following the principle of natural justice.
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> ORDER:
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> 13. The Appeal is, accordingly, disposed of in the above manner."

3. Learned counsel for the petitioner submits that within a short span of 5 days, the impugned order dated 3 February, 2025 has been passed by the Joint Commissioner, Mumbai Central on the show cause notice dated 8 February, 2023, which was also the subject matter of consideration and operative order passed by the Appellate Authority in the petitioner's appeal as noted by us hereinabove. We find that the petitioner was issued show cause notice dated 8 February, 2023 and the hearing of the same being granted to the petitioner was also subject matter of consideration before the Appellate Authority in the aforesaid order dated 28 January, 2025. The petitioner contends that the Joint Commissioner, Mumbai Central, while passing the impugned order dated 3 February, 2025 ought to have proceeded by following the mandate of the order passed by the Additional Commissioner (Appeals-II) dated 28 January, 2025 (supra).

4. On hearing learned counsel for the parties and more particularly the submissions as advanced by Ms. Maya Majumdar, learned counsel for the department, we find that the order dated 28 January, 2025 was not available to the concerned officer at the time when the impugned order was passed. In fact, such order was made available to the concerned officer almost after a month.

5. In the aforesaid circumstances, we are of the opinion that the orders passed by the Additional Commissioner (Appeals-II) are required to be followed, particularly when it is directed that show cause notice dated 8 February, 2023 on the cancellation of the registration, be heard simultaneously and decided, as the issues may have a bearing on the decision to be taken by the original authority.

6. In this view of the matter, we are inclined to set aside the impugned order dated 3 February, 2025 and remand the proceedings to Joint Commissioner, Mumbai Central, who shall take up the show cause notice as directed by the Appellate Authority and decide the same in accordance with law, as expeditiously as possible,after granting an opportunity of hearing to the parties, and in any event, within a period of six weeks from the date this order is made available to the parties.

7. All contentions of the parties are expressly kept open.

8. Disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.) **(G. S. KULKARNI, J.)**