

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8990 OF 2025

G.B. Traders

...Petitioner

Vs

Union of India & Ors.

...Respondents

Ms. Ankita Vashistha a/w C. Bohra for the Petitioner.

Ms. Mamta Omle i/b. Nitee P. for Respondents.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 1 APRIL 2026

ORAL JUDGMENT (PER AARTI SATHE, J.):-

1. Rule. Rule made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.
2. This Petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:-

"a) Declare that the Impugned Order-1 dated 22.08.2024 and Impugned Order-2 dated 10.10.2024 passed by the Respondent No. 2 (Exhibit "A" & "B" to the present Petition) - is perverse, is arbitrary, is passed in breach of principles of natural justice, is passed without proper application of mind, is ultra vires the provisions of Section 29 and 30 of the CGST Act read with corresponding rules made thereunder, is contrary to the rights and protections guaranteed under Articles 14, 21, 265 and 300A of the Constitution of India, and is issued wholly without and/or in excess of jurisdiction.

b) issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner case and after going into the validity and legality thereof quash and set aside the

Impugned Order-1 dated 22.08.2024 and Impugned Order-2 dated 10.10.2024 passed by the Respondent No. 1 (Exhibit "A" & "B");

c) issue a Writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India, directing the Respondent No. 3:

(i) to set-aside the Impugned Order-1 dated 24.08.2024 Impugned Order-2 dated 10.10.2024 passed by the Respondent No. 2, which is at Exhibit - "A" & "B" to the present Petition; and/or

(ii) to direct the Respondents to restore the Petitioner's registration from the date of cancellation of registration, i.e., 16.03.2023."

3. The primary grievance of the Petitioner is in respect of the cancellation of the Goods and Services Tax (GST) registration of the Petitioner by an order dated 22nd August 2024 bearing reference No. ZA270824172470F, and also the *ex-parte* order dated 10th October 2024, rejecting the application for revocation of cancellation of GST registration bearing No. ZA271024071427N (hereinafter collectively referred to as "impugned orders").

4. The facts in the present Petition lie in a narrow compass, which are as follows:-

i. The Petitioner is a proprietary concern, and the proprietor is one Mr. Ghosebasha, in the business of aggregating used plastic PET bottles from small vendors and supplying the same in bulk to its customers for recycling purposes. The Petitioner obtained the registration under the Central Goods and Services Tax Act, 2017 (CGST Act) bearing registration No. 27DWRPG8915E1Z4, effective from 16th March 2023, and the same was approved by Respondent No. 2. The Petitioner was discharging the GST obligations by depositing tax.

ii. In the month of March 2024, Mr. Ghosebasha, the proprietor of the Petitioner concern was diagnosed with Stage V chronic kidney disease. Owing to the Petitioner's proprietors' deteriorating health condition, the Petitioner's business became non-operational and came at a standstill. The Petitioner was unable to surrender its GST registration; however, his consultant duly filed the GST returns during the said time.

iii. Respondent No. 3 conducted a field visit at the premises of the Petitioner concern and on 29th May 2024 reported that the Petitioner's business was found to be non-operational, and as a consequence thereof, proceedings under Section 29 of the CGST Act for *ab-initio* cancellation of its GST registration were initiated.

iv. On 11th June 2024, a show-cause notice of even date was issued to the Petitioner by Respondent No. 3 on the online GST portal for cancellation of GST registration, invoking Rule 21(a) of the Central Goods and Services Tax Rules, 2017 (CGST Rules), *inter-alia* alleging that the Petitioner does not conduct any business from the declared place of business, and the GST registration was suspended with effect from 11th June 2024.

v. Thereafter, on 26th June 2024, detailed replies were filed manually before Respondent No. 3 on behalf of the Petitioner, and thereafter on 27th June 2024, the Petitioner proprietor's representative also visited the office of Respondent No. 3 to give a detailed explanation, and submitted that the GST registration of the Petitioner should not be cancelled, inasmuch as the Petitioner

was genuinely carrying on business from the principal place of business registered under GST, and it was only on account of the ill-health of the proprietor Mr. Ghosebasha that temporarily the business was at a standstill. The representative of the Petitioner proprietor submitted that the same did not warrant cancellation of the GST registration, and hence requested that the same should not be suspended.

vi However, without considering the submissions made on behalf of the Petitioner, Respondent No. 3 passed the impugned order dated 22nd August 2024, on the ground that the Petitioner firm was non-operational, as no business activities were found to be carried out at the registered address of the principal place of the business of the Petitioner. The registration of the Petitioner was therefore cancelled under Section 29(a) of the CGST Act read with Rule 21(a) of the CGST Rules. The Petitioner thereafter applied for revocation of the aforesaid cancellation of the GST registration and also submitted the requisite documents. However, the same were not considered and another show-cause notice dated 27th September 2024 was issued to the Petitioner, proposing to reject the application for revocation filed by the Petitioner. Before a reply to the aforesaid show-cause notice could be filed on behalf of the Petitioner, another *ex-parte* order dated 10th October 2024 was passed by Respondent No. 3, rejecting the application for revocation of the cancellation of registration on the ground that no reply was submitted by the Petitioner to the show-cause notice dated 27th September 2024. It is in this backdrop that the Petitioner has filed the present Petition.

5. Ms. Ankita Vashistha appeared for the Petitioner, and Ms. Mamta Omle appeared for the Respondents. Ms. Ankita Vashistha, learned Counsel on behalf of the Petitioner submitted that the action of the Respondents in cancelling the GST registration of the Petitioner is arbitrary, inasmuch as they have not taken into consideration the genuine reason of the of the proprietor Mr. Ghosebasha's ill-health, on account of which the business was non-operational. It is also her submission that the show-cause notice, without giving any reasons, suspended the registration of the Petitioner, and further the impugned order dated 22nd August 2024 cancelling the registration of the Petitioner also did not take into consideration any of the submissions made by the Petitioner. Learned Counsel for the Petitioner also sought to place reliance on the following decisions:-

- i. *Makersburry India Pvt. Ltd. v. State of Maharashtra*¹
- ii. *Monit Trading Private Limited v. Union of India*²
- iii. *C.P. Pandey & Co. v. Commissioner of State Tax*³
- iv. *Ramji Enterprises v. Commissioner of State Tax*⁴
- v. *Nirakar Ramchandra Pradhan v. Union of India*⁵
- vi. *Afzal Husain Saiyed v. Principal Commissioner of Central Tax, Mumbai Central*⁶

6. Ms. Mamta Omle instructed by Nitee P., learned Counsel for the Respondents, opposed the reliefs as prayed for in the Petition, and submitted that

1 2023 (79) G.S.T.L. 341 (Bom)

2 2023 (76) G.S.T.L. 34(Bom)

3 (2024) 123 GSTR 84

4 2023 (78) G.S.T.L. 220 (Bom.)

5 2023 (9) TMI 1176-Bombay High Court

6 2023 (79) G.S.T.L. 296 (Bom.)

the cancellation of the registration was valid inasmuch as on inspection of the principal place of business of the Petitioner, it was found that no business activity was being conducted there, and hence the registration was rightly cancelled by Respondent No. 3.

7. Having heard learned Counsel for the parties, we are of the opinion that there is much substance in the contention as urged on behalf of the Petitioner that the cancellation of the registration in the facts of the present case was arbitrary, and further that the show-cause notices and the impugned orders have not taken into consideration or rendered any findings in respect of the submissions made by the Petitioner. It is our view this was a genuine case where the ill-health of the proprietor of the Petitioner concern Mr. Ghosebasha, suffering from chronic kidney disease, was not considered by the Respondents, which resulted in the temporary discontinuance of the business, and therefore the action of the Respondents in cancelling the registration is high-handed and arbitrary.

8. It is evident that neither the impugned orders, nor the show-cause notices contain any discussion or reasoning as to why the Petitioner's registration has been cancelled. In our view, the same appear to have been passed mechanically and in a standardised manner, without any application of mind on part of the Respondents.

9. In light of the above, we are of the considered opinion that the actions of the Respondents are without authority of law and are liable to be set aside. Our view is fortified by the decision of a Co-ordinate Bench of this Court in *Makersburry India*

Pvt. Ltd. v. State of Maharashtra (supra), on which one of us, G. S. Kulkarni, J., was a member, wherein it was categorically held that where a show-cause notice seeking cancellation of registration fails to set out adequate reasons enabling the assessee to file an effective reply, and the reasons provided are vague, any consequential order of cancellation passed pursuant thereto would be liable to be quashed and set aside. It was further held in the aforesaid decision that as a consequence of quashing of the impugned orders, the same would result in the restoration of the Petitioner's GST registration. The relevant paragraphs of the said decision are reproduced below:-

“15. 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.

16. In the aforesaid circumstances, we are of the clear opinion that the petitioner would be justified in placing reliance on the decision of this Court in *Monit Trading Pvt. Ltd.* (supra) in which in identical circumstances and being confronted with a similar show cause notice, the action on the part of the department was set aside. The relevant observations which are apt in the present case are required to be noted, which reads thus:

“10. This apart there is quite casualness in the appellate authority discharging its statutory jurisdiction, inasmuch as the documents as submitted by the petitioner as permitted to be submitted by orders dated 6 January, 2022 passed by the Division Bench of this Court are not bothered to be referred, much less discussed or any reasons attributed on these document, in recording a blanket conclusion as set out in paragraph 13(D) of the impugned order, that the company was found non-existent and no books of accounts, physical or electronic form, were found maintained at the principal place of business. As pointed out on behalf of the petitioner, all the necessary books which were available with the petitioner were submitted, which we have noted above. There is not a whisper of reference to such material in the impugned order passed by the appellate authority. This apart even in regard to the premises of the petitioner, the petitioner had furnished documents and reasons on the rental agreement it had with the sister concern M/s. Kayavlon Impex Pvt. Ltd. The appellate authority nowhere refers as to why such rental agreement would be not acceptable for the petitioner to occupy the premises much less under any rule. The appellate authority is certainly not an authority which would have any jurisdiction which any forums under the Rent Act or under the Companies Act would exercise to comment on the nature of the said agreement. Thus, in our opinion, the reasons as set out by the appellate authority in confirming the order passed by the Assistant Commissioner are ex- facie untenable. At no point of time, it appears that the petitioner was called upon to furnish any clarification on the legal status or any factual details of the rental agreement or any other documents which were not on the record before the appellate authority. Even the observations which are made in respect of the directors of the petitioner are totally untenable.

11. In the above circumstances, we have no alternative but to set aside the impugned order-in-original dated 31 January, 2022 passed by the Assistant Commissioner, and impugned order passed by the Joint Commissioner (Appeals-II). We order restoration of the petitioner's registration, with liberty to the respondents to follow the due procedure in law, in the light of the observations as made by us, in the event if any fresh action is intended to be taken against the petitioner. Ordered accordingly.

12. Although we have granted the above relief, we are not inclined to rest here, when in exercise of our writ jurisdiction, we have come across something which would disturb our judicial conscience. Having considered the facts of the case, we would be failing in our duty if we do not comment on the unfair approach of the officers who have passed the orders as

referred by us. Firstly, the approach of the Superintendent at whose instance the proceeding commenced and who issued the show cause notice; secondly, of the Assistant Commissioner, Division-X, CGST and Central Excise, Mumbai, East, who passed the order of cancellation of petitioner's registration dated 31 January, 2022; and thirdly, of the Joint Commissioner (Appeals-II), CGST and Central Excise, Mumbai who passed the impugned orders on the petitioner's appeal.

13. We would normally not make such observations, however, in our opinion, the present case is gross. It has surpassed all canons of fairness, reasonableness and the bounden duty of these officers to act in accordance with law. Such officers in their public position wield drastic powers which are conferred on them by law, however, such powers are coupled with a onerous duty and obligation to be exercised strictly in accordance with law and in no other manner, much less recklessly. As observed above, each of these officers have deviated in adhering to such basic principles in the jurisdiction which they were empowered to exercise as conferred by law. In fact, on the edifice of a patently illegal show cause notice, the consequence of which appeared to be predetermined, the first authority proceeded to pass an order against the petitioner cancelling its registration. If the elementary principles of law of adherence to the principles of natural justice, in regard to issuance and adjudication of show cause notices are not being followed by such authorities, the fate of the citizens at the hands of the authorities, is just to be imagined. This is one case which in our opinion is an eye opener. Certainly, the orders passed by these authorities have resulted in civil consequences. It has directly affected the rights of the petitioner guaranteed under Articles 19(1)(g) and 300A of the Constitution. We may observe that in a given case the conduct of the assessee may be howsoever in breach of the rules and law, but that does not mean that the authorities who are to act under law could have powers to throw to the wind all canons of fairness, non-arbitrariness and discard the lawful procedure required to be followed by them in any administrative adjudication. At all material times, such authorities would be required to act in strict adherence to the rule of law in passing orders in discharge of their official duties under the Act and the Rules. Such officers can in no manner have an approach to violate any legal rights of the citizens. We are constrained to make these observations so that other assessee's who are similarly situated are not affected at the hands of such officers. The pain and suffering of any person who becomes a victim of such approach needs to be felt and realized by them in resorting to such actions. The authorities cannot drag the

assessee's into unwarranted litigation. The observations of the Court and the anguish needs to reach these officers.”

17. Similar view has been taken by this Court in the case of Nirakar Ramchandra Pradhan v. Union of India (supra), which was a case wherein similar circumstances the department attempted to justify the impugned order by filing a detailed affidavit as sought to be done in the present case. The Court had expressed its displeasure in the department adopting such approach. The following observations as made by the Court are required to be noted, which reads thus:

“9. For the aforesaid reasons, the impugned order is required to be held to be illegal and a total nullity. It is well settled principles of law that cancellation of registration certainly meets the assessee with a civil consequence. The petitioner's registration could not have been cancelled without any reason, as no reasons were neither set out in the show cause notice nor set out in the impugned order. The show cause notice and the impugned order suffered from an incurable defect which compels us to exercise the discretionary jurisdiction under Article 226 of the Constitution of India to quash and set aside the show cause notice as also the impugned order based on such illegal show cause notice.

10.

11. Before parting, we need to make some observations. We may note that the case of the department is that there is substantial revenue involved in the present case which may be deprived to the public exchequer and by conduct which is also attributable to the petitioner. According to the respondents, there was a modus operandi on the part of the petitioner to generate and claim fake ITC. If what is stated on behalf of the revenue is to be believed to be correct, in such event, the designated officer should have been more careful and could not have been so careless in issuing such defective show cause notice. The impugned action in issuing such show cause notice and passing of the impugned order thereon, has in fact proved counter-productive to the interest of revenue, if the department is correct in its case as put up in the reply affidavit for the first time. The concerned Commissionerate needs to take a serious view of such approach of the concerned officers who are not following the law in issuing appropriate show cause notices more particularly when the issues are serious. Such deviation by the concerned officers from deviating from following the well settled norms and procedure, in fact would benefit an assessee if there is material that he has committed illegalities.”

18. We also note that similar view has been taken by the Division Bench of Gujarat High Court in the case of *Lakkad Brothers v. State of Gujarat*, as also by the Delhi High Court in the case of *Quality Traders v. Yogesh Kumar* and by the Allahabad High Court in *DRS Wood Products v. State of Uttar Pradesh*.

19. We are of the opinion that time and again the department is not required to be told by the Court as to what would be the position in law as also the correct approach in law, the officers needs to follow. We observe so, as repeatedly the Court being called upon to adjudicate similar issues. There has to be a sense of responsibility and accountability, any mechanical approach in this regard, even to justify such action, in our opinion cannot be the stand of the department.”

10. We would also be supported by another decision passed by the Co-ordinate Bench of this Court, of which one of us, G. S. Kulkarni, J. was a Member, in the case of *Monit Trading Private Limited v. Union of India* (supra), in which it has been held that a vague and ambiguous show-cause notice cancelling the registration of the Petitioner would be in gross breach of the principles of natural justice, and it amounts to arbitrariness and high-handedness, requiring the interference of this Court. In the aforesaid case, this Court reprimanded the casual approach adopted by the authorities while cancelling the registration of the Petitioner, without due consideration of the *bonafide* reasons furnished. The relevant paras of the said decision are reproduced below:-

“10. This apart there is quite casualness in the appellate authority discharging its statutory jurisdiction inasmuch as the documents as submitted by the petitioner as permitted to be submitted by orders dated 6 January 2022 passed by the Division Bench of this Court are not bothered to be referred, much less discussed or any reasons attributed on these documents, in recording a blanket conclusion as set out in paragraph 13(D) of the impugned order, that the company was found non-existent and no books of accounts, physical or electronic form, were found maintained at the principal place of business. As pointed out on behalf of the petitioner all the necessary books which

were available with the petitioner were submitted, which we have noted above. There is not a whisper of reference to such material in the impugned order passed by the appellate authority. This apart even in regard to the premises of the petitioner, the petitioner had furnished documents and reasons on the rental agreement it had with the sister concern M/s. Kayavlon Impex Pvt. Ltd. The appellate authority nowhere refers as to why such rental agreement would be not acceptable for the petitioner to occupy the premises much less under any rule. The appellate authority is certainly not an authority which would have any jurisdiction which any forums under the Rent Act or under the Companies Act would exercise to comment on the nature of the said agreement. Thus, in our opinion the reasons as set out by the appellate authority in confirming the order passed by the Assistant Commissioner are ex facie untenable. At no point of time, it appears that the petitioner was called upon to furnish any clarification on the legal status or any factual details of the rental agreement or any other documents which were not on the record before the appellate authority. Even the observations which are made in respect of the directors of the petitioner are totally untenable.

11. In the above circumstances, we have no alternative but to set aside the impugned order-in-original dated 31 January, 2022 passed by the Assistant Commissioner, and impugned order passed by the Joint Commissioner, (Appeals-II). We order restoration of the petitioner's registration, with liberty to the respondents to follow the due procedure in law, in the light of the observations as made by us, in the event if any fresh action is intended to be taken against the petitioner. Ordered accordingly.

12. Although we have granted the above relief, we are not inclined to rest here, when in exercise of our writ jurisdiction, we have come across something which would disturb our judicial conscience. Having considered the facts of the case, we would be failing in our duty if we do not comment on the unfair approach of the officers who have passed the orders as referred by us. Firstly, the approach of the Superintendent at whose instance the proceeding commenced and who issued the show cause notice; secondly, of the Assistant Commissioner, Division-X, CGST and Central Excise, Mumbai, East, who passed the order of cancellation of petitioner's registration dated 31 January 2022; and thirdly of the Joint Commissioner, (Appeals-II) CGST and Central Excise, Mumbai who passed the impugned orders on the petitioner's appeal.

13. We would normally not make such observations, however, in our opinion, the present case is gross. It has surpassed all canons of fairness, reasonableness and the bounden duty of these officers to act in accordance with law. Such officers in their public position wield drastic powers which are conferred on them by law, however such powers are coupled with a onerous duty and obligation to be exercised strictly in accordance with law and in no other manner, much less recklessly. As

observed above, each of these officers have deviated in adhering to such basic principles in the jurisdiction which they were empowered to exercise as conferred by law. In fact on the edifice of a patently illegal show cause notice, the consequence of which appeared to be predetermined, the first authority proceeded to pass an order against the petitioner cancelling its registration. If the elementary principles of law of adherence to the principles of natural justice, in regard to issuance and adjudication of show cause notices are not being followed by such authorities, the fate of the citizens at the hands of the authorities, is just to be imagined. This is one case which in our opinion is an eye opener. Certainly, the orders passed by these authorities have resulted in civil consequences. It has directly affected the rights of the petitioner guaranteed under Articles 19(1) (g) and 300A of the Constitution. We may observe that in a given case the conduct of the assessee may be howsoever in breach of the rules and law, but that does not mean that the authorities who are to act under law could have powers to throw to the wind all cannons of fairness, non arbitrariness and discard the lawful procedure required to be followed by them in any administrative adjudication. At all material times, such authorities would be required to act in strict adherence to the rule of law in passing orders in discharge of their official duties under the Act and the Rules. Such officers can in no manner have an approach to violate any legal rights of the citizens. We are constrained to make these observations so that other assessees who are similarly situated are not affected at the hands of such officers. The pain and suffering of any person who becomes a victim of such approach needs to be felt and realized by them in resorting to such actions. The authorities cannot drag the assessees into unwarranted litigation. The observations of the Court and the anguish needs to reach these officers.”

11. We are also of the view that the other decisions relied upon by the learned Counsel for the Petitioner would support the case advanced by them, and hence the actions of the Respondents in cancelling the GST registration of the Petitioner in the absence of any reasons are in defiance of the orders passed by this Court consistently on the issue of cancellation of GST registration.

12. For the aforesaid reasons, we have no manner of doubt that the impugned orders would be required to be set aside. We accordingly allow this Petition in terms of the following order:-

ORDER

- i. The impugned show-cause notices dated 11th June 2024 and 27th September 2024 are quashed and set aside. The consequential impugned orders dated 22nd August 2024 and 10th October 2024 cancelling the Petitioner's GST registration passed by the Respondents are also quashed and set aside.
- ii. In the event there is any tangible material, the Respondents are at liberty to initiate fresh proceedings against the Petitioner, however with a direction to the Designated Authority that in the event a fresh show-cause notice is issued to the Petitioner, it ought to be in accordance with law, setting out appropriate reasons. The show-cause notice be adjudicated in accordance with law, after granting an opportunity to the Petitioner, to place on record all their contentions, and after granting a personal hearing to the Petitioner.
- iii. The show-cause notice be adjudicated upon as expeditiously as possible, preferably within four weeks from the date of filing of the reply, as may be directed to be filed by the Petitioner.
- iv. All contentions of the parties in that regard are expressly kept open.
- v. We also clarify that we have not precluded the Respondents from exercising any other powers as may be available to the Respondents in law as the facts and circumstances may warrant. Our observations are confined only to the show-cause notices in question and the impugned orders.
- vi. Needless to observe that setting aside the impugned orders should result in the registration of the Petitioner being restored. It is however clarified that

this would not preclude the Revenue from issuing any fresh order to suspend the GST registration as may be permissible in law.

vii Rule made absolute in the aforesaid terms.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)