

Makersburry India Pvt. Ltd vs State Of Maharashtra Thr App And Ors on 3 October, 2023

Author: G.S. Kulkarni

Bench: G. S. Kulkarni

2023:BHC-AS:30863-DB

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7506 OF 2023

Makersburry India Pvt. Ltd.
Having registered office at
G-65, ,G-66, Ground Floor,
Dadar Manish Market Co-op. Society Ltd.
Senapati Bapat Marg, Dadar (W),
Mumbai - 400 028.

Vs.

1. State of Maharashtra, through AGP Office }
}
2. The Deputy Commissioner of State Tax, }
Appellate Authority, }
MUM-VAT-E-905, Bandra Division, }
Cabin No. 509, 5 floor, MTNL Bldg., }
th }
Love Lane, Byculla (East) }
Mumbai - 400 010. }
}
3. The State Tax Officer Nodal - 5, }
513, 5 floor, GST Office, }
th }
MTNL Building, Love Lane, }
Byculla (East), Mumbai - 400 010. }

Mr. Sujit Sahoo a/w. Mr. Sharad Goswami for the petitioner.
Ms. Shruti D. Vyas, 'B' Panel counsel for the respondents-State.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : OCTOBER 3, 2023

ORAL JUDGMENT (Per G.S. Kulkarni, J.):

1. Rule, made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. This petition filed under Article 226 of the Constitution primarily

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7.WP7506_2023.doc challenges an order dated 26 April, 2023 passed by the Deputy Commissioner of State Tax, being the Appellate Authority exercising jurisdiction under the provisions of Section 20 of Integrated Goods & Services Tax Act, 2017 (for short "IGST Act") read with provisions of Section 107 of Central Goods & Services Tax Act, 2017 (for short "CGST Act"). The issue in the proceedings pertain to the cancellation of the petitioner's registration as granted under the provisions of the said Acts, the genesis being a show cause notice dated 22 August, 2022. The only reason as set out in the show cause notice to cancel the registration, reads thus:

"In case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts."

The show cause notice also has suspended the registration of the petitioner with effect from 22 August, 2022.

3. The case of the petitioner is that the petitioner submitted a reply to the show cause notice on 25 August, 2022 inter alia contending that the Directors of the Company had appeared before the Designated Officer and had given their respective statements as also submitted all the relevant documents. It is contended by the petitioner that as initially the documents submitted were not accepted by the department, they were forwarded by email. It is also pointed out by the petitioner that all the documents were loaded on the portal while obtaining the registration, the

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7.WP7506_2023.doc details of which were also set out in the reply. Further, the staff of the department had visited the petitioner's registered place of business, as also were furnished documents. It is hence the petitioner's case that the petitioner had cooperated with the department on all aspects.

4. Learned counsel for the petitioner on such backdrop would submit that the reasons as furnished to initiate an action for cancellation of the registration as noted by us above were vague, arbitrary and in breach of principles of natural justice. The petitioner has also referred to a decision of the Gujarat High Court in the case of Singh Traders vs. State of Gujarat¹ to contend that such an action was held to be an action in breach of principles of natural justice.

5. The petitioner has contended that despite such clear reply to the show cause notice, the Designated Officer proceeded to pass an order dated 17 October, 2022 cancelling the registration of the petitioner on reasons which, according to the petitioner, are totally arbitrary. It is submitted that the registration is also cancelled with retrospective effect from 10 April, 2021. The reasons as set out in the impugned order are required to be noted, which reads thus:

"You could not explain the reason for not being presented at the time of visit at P.O.B and A.P.O.B. of MAKERSBURRY INDIA PRIVATE LIMITED, there were no any business activity found nor any stock found. Both the Directors or any Authorized Legal Representative not represented the case or could furnish any 1 Special Civil Application No. 6315 of 2022 dated 06.04.2022

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7.WP7506_2023.doc statement satisfactorily. The reply submitted by the taxpayer dt. 25/08/2022 is not relevant to the point raised in show-cause notice issued by this office. Hence, the same is not acceptable to this office.

The effective date of cancellation of your registration is 10/04/2021."

6. As none of the contentions as urged by the petitioner were addressed by the Designated Officer in passing such order, the petitioner contending that there being an apparent non-application of mind, the petitioner approached the appellate authority in an appeal before the Deputy Commissioner of State Tax (Appeals), by invoking the provisions of Section 107 of the CGST Act. Perusal of the appeal memo indicates that the appeal memo incorporated detailed grounds, legal as well as factual, for consideration of the appellate authority, pointing out as to why the order dated 17 October, 2022 cancelling the petitioner's registration was required to be interfered in such appeal.

7. Further, the petitioner by its letter dated 20 October, 2022 submitted before the appellate authority several documents, namely, Memorandum and Articles of Association, Certificate of incorporation, Registered Office Agreement, Additional Place of Business Copy of Agreement, Electricity Bill of POB and APOB, Outward supply bills copy with E way Bills, Inward supply bills copy with E way Bills, Stock Statement upto March 2022, Balance Sheet as on 31.02.2021 and

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7.WP7506_2023.doc 31.03.2022, Bank Statements up to March 2022 and Transport Arrangement Agreement.

8. By a further letter dated 18 November, 2022, the petitioner submitted additional documents, namely, Certificate of Incorporation, Aadhar & Pan Card for the Directors, Balance and Audit Report for the year ended March 2022, Trial Balance from April 2022 to till, Sales Register with additional columns having E way bills and quantity, Purchase register, Agreement copy with Transporter, Sales Invoice, Purchase Invoice, Ledger copies of major suppliers and customers, Bank statement, Stock Register, Summary of Sales and Purchase, Rent copies of APOB & POR given on rent by the Director Mr. Vasant Khuman, Declaration from Mr. Dinesh Jaiswal for his earlier Licensee Mr. Mohammed Yunus Shaikh, Declaration from Mr. Mohammed Yunus Shaikh and deletion of APOB from his registration.

9. On 22 November, 2022, the petitioner also submitted detailed written submissions. We note from the record that further documents were submitted by the petitioner on 25 November, 2022 and 29 November, 2022. Additional written submissions were furnished on 15 December, 2022.

10. On such backdrop of such voluminous material being placed for

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7.WP7506_2023.doc consideration before the appellate authority, it appears that the appellate authority proceeded to pass the impugned order without considering such materials, thereby rejecting the petitioner's appeal. The only reasons which can be found in the order passed by the appellate authority are contained in paragraph(viii) to (x), which reads thus:

"(viii) Thus from the above facts and circumstances, it is clear that the Appellant had failed to prove the business of goods being carried out. Therefore, the statement of facts, the grounds of appeal, prayer and contention of the appellant is devoid of the facts and not just and proper.

(ix) The intent of the appellant is proved in respect of Registration obtained by means of fraud, wilful misstatement or suppression of facts.

(x) Hence, the impugned order was found just and proper with cancellation of the registration certificate ab-initio, i.e., from 10/04/2021 is found liable to be confirmed."

11. We find that the appellate authority has merely referred to the documents which were submitted. There is no discussion whatsoever to come to such conclusion and more particularly after discussing the materials as submitted by the petitioner, as noted by us in the aforesaid paragraphs. Thus, clearly there is patent non-application of mind on the appellate authority reaching such conclusion without recording any reason whatsoever to reject the petitioner's appeal and maintain cancellation of registration.

12. Learned counsel for the petitioner would thus be correct in

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7.WP7506_2023.doc submitting that the impugned order cancelling the petitioner's registration as also rejecting the petitioner's appeal are ex-facie without application of mind, as no reasons are set out in both the orders. The petitioner's contention that the impugned orders are in breach of principles of natural justice and has resulted into unwarranted harassment to the petitioner has much substance. In support of his contention, reliance is placed on the decision of this Court in C.P. Pandey & Co. vs. Commissioner of State Tax², Monit Trading Pvt. Ltd. vs. Union of India³, Ramji Enterprises & Ors. vs. Commissioner of State Tax & Ors.⁴ and Nirakar Ramchandra Pradhan vs. Union of India & Ors.⁵.

13. Learned counsel for the respondents, however and quite surprisingly, has instructions to support the impugned order. She is not in a position to justify that the impugned order is bereft of any reasons and more particularly considering the documents which were placed on record not only before the designated authority but also the appellate authority. In support of her contention, learned counsel for the respondent has placed reliance on the reply affidavit of Mr. Prakash Narendra Shelake, Joint Commissioner of State Tax, Nodal Division-5, Mumbai, which is tendered before us today. The affidavit for the first time has intended to 2 (2023) 10 Centax 11 (Bom.) 3 (2023) 8 Centax 248 (Bom.) 4 Writ Petition No. 277 of 2023 dated 10.07.2023 5 Writ Petition No. 2534 of 2023 dated 11.09.2023

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7.WP7506_2023.doc justify the impugned order and for reasons which are completely dehors and/or outside the impugned order.

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

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7.WP7506_2023.doc less any discussion on these documents so as to consider the case of the petitioner against cancellation of its registration.

15. 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

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7.WP7506_2023.doc 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

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7.WP7506_2023.doc 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."

16. Similar view has been taken by this Court in the case of Nirakar Ramchandra Pradhan vs. Union of India & Ors. (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

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7.WP7506_2023.doc 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."

17. We also note that similar view has been taken by the Division Bench of Gujarat High Court in the case of Lakkad Brothers vs. State of Gujarat⁶, as also by the Delhi High Court in the case of Quality Traders vs. Yogesh Kumar⁷ and by the Allahabad High Court in DRS Wood Products vs. State of Uttar Pradesh⁸.

18. 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.

19. For the aforesaid reasons, we have no manner of doubt that the 6 (2023) 4 Centax 364 (Guj.) 7 (2023) 10 Centax 150 (Del.) 8 2022(64) G.S.T.L. 132 (All.)

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7.WP7506_2023.doc impugned order would be required to be set aside. We, accordingly, allow this petition in terms of the following order:

ORDER

(i) The impugned show cause notice dated 22 August, 2022 is quashed and set aside. The consequential order dated 17 October, 2022 cancelling the petitioner's registration as also the order dated 26 April, 2023 passed by the appellate authority quashed and set aside.

(ii) 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 his contentions, and after granting personal hearing to the petitioner.

(iii) The show cause notice be adjudicated 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

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7.WP7506_2023.doc circumstances may warrant. Our observations are confined only to the show cause notice in question and the impugned order.

(vi) Needless to observe that setting aside the impugned order would 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 registration as may be permissible in law.

(vi) Rule is made absolute in the aforesaid terms.

20. We were inclined to impose costs on the respondents, as repeatedly we are called upon to adjudicate on such orders despite our prior pronouncements making the position very clear. However, with a final hope that the respondents would adopt an approach the law would mandate, we refrain from imposing costs on the present proceedings. Hence, no costs.

[JITENDRA JAIN, J.]

Signed by: Vidya S. Amin
Designation: PS To Honourable Judge
Date: 16/10/2023 18:59:24

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