

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1324 OF 2023

C. P. Pandey & Co.

... Petitioner

Versus

Commissioner of State Tax

...Respondent

Mr.Sham Walve with Mr.Anjesh Pandit i/b. Anjesh Nilesh Advocates
LLP, for the Petitioner.

Ms. Jyoti Chavan, AGP for the Respondent – State.

CORAM: G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATED: 31 July, 2023

Oral Judgment (Per G. S. Kulkarni, J.)

1. We have heard Mr.Walve, learned Counsel for the petitioner and Ms.Chavan, learned AGP for the respondent-State. At the outset, Mr. Walve would submit that the petitioner would confine the relief as sought for in terms of prayer clause (a) which reads thus:-

a. Issue an appropriate writ and order to quash and set aside the impugned orders of suspension of GST Registration dated 25.06.2021 and Cancellation of GST Registration dated 12.07.2021 and marked as an Exhibit- B & C and duly attached to the present writ petition.”

2. It is submitted by Mr. Walve that the petitioner was issued a show cause notice dated 25 June 2021. A reply to the show cause notice was filed on 29 June

2021. He submits that the impugned order on the show cause notice was passed on 12 July 2021 cancelling the registration of the petitioner.

3. The primary contention as urged by Mr. Walve and as seen from the impugned order dated 12 July 2021 is that the cancellation of the petitioner's registration is not on the ground as contained in the show cause notice. It is submitted that the petitioner has already filed an appeal before the Deputy Collector of State Tax (Appellate Authority) on 28 May 2022, however, till date the said proceedings have no manner have moved forward, although more than one year has lapsed. It is his submission that there is a serious prejudice which is being caused to the petitioner due to the illegal cancellation of the registration. In these circumstances, he submits that, there was no alternative for the petitioner but to approach this Court.

4. Mr. Walve would submit that the impugned order needs to be quashed and set aside, considering the settled principles of law that an order cannot be passed on a ground which is not a ground in the show cause notice, as no opportunity was available to the petitioner to meet such grounds, which emerge for the first time in the orders passed, at the final adjudication of the show cause notice. In such context Mr. Walve has also drawn our attention to an order passed by this Court in "**Ramji Enterprises & Ors. Vs. Commissioner of State Tax & Ors.**"¹ wherein in similar circumstances, on the ground that the impugned order

1 OS Writ Petition No.277 of 2023, decided on 10/7/2023

was passed on a ground different from the ground as set out in the show cause notice, the Court quashed and set aside a similar order, which was passed by the respondent. In support of his contention that the registration of the petitioner is required to be restored, learned Counsel for the petitioner has relied on the decision of this Court in “**Monit Trading Pvt. Ltd. Vs. Union of India & Ors.**”².

5. On the other hand Ms. Chavan, learned AGP for the Revenue would submit that the petitioner needs to pursue the pending appeal as filed by the petitioner. She is however, not in a position to dispute as to what has been contended by Mr. Walve on the impugned order and that in similar circumstances the view of this Court in the case of **Ramji Enterprises & Ors.** (supra).

6. Having heard learned Counsel for the parties, we are of the opinion that there is substance in the contention as urged on behalf of the petitioner, inasmuch as there appears to be no dispute that the impugned order cancelling the registration of the petitioner appears to be on the ground completely outside the scope of show cause notice issued to the petitioner. This would certainly cause prejudice to the petitioner as the petitioner was never granted an opportunity of being confronted with such grounds in the show cause notice, so as to have an opportunity to meet such case of the department. In the absence of such opportunity, certainly the principles of natural justice would become

2 2023(7) TMI 911, Bombay High Court.

applicable and any order of such nature as passed, would be required to be held to be in breach of the principles of natural justice.

7. We are also in agreement with Mr. Walve when he relies on the decision in **Ramji Enterprises & Ors.** (supra). The said decision was rendered in similar circumstances as in the present case, when the Court set aside the orders cancelling registration.

8. In the light of the above discussion, we are of the opinion that the impugned order dated 12 July 2021 is required to be quashed and set aside, with liberty to the respondent to issue a fresh show cause notice to the petitioner as permissible in law and after according an opportunity of a hearing to the petitioner, pass an appropriate order in accordance with law. Ordered accordingly.

9. At this stage, Ms.Chavan states that a show cause notice would be issued to the petitioner within a period of three weeks from today. Such show cause notice be responded by the petitioner within a period of two weeks from the date of issuance of the said notice. After the reply is received by the Designated Officer, he shall, after following the principles of natural justice, pass appropriate orders on the show cause notice within a period of six weeks from the date of hearing which may be granted to the petitioner. All contentions in that regard are expressly kept open.

10. Needless to observe that in view of setting aside of the impugned order and as observed by this Court in **Monit Trading Pvt. Ltd.** (supra), the registration of the petitioner would be required to be restored and the same be done within one week from today. This shall be without prejudice to the rights and authority of the department to follow the lawful procedure for any fresh action as observed above.

11. The petition is allowed in the above terms. No costs.

(JITENDRA JAIN, J.)

(G. S. KULKARNI, J.)