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WP-19011-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 30th OF SEPTEMBER, 2024

WRIT PETITION No. 19011 of 2024

*MAHAKALI FOODS PVT. LTD. THROUGH ITS DIRECTOR SHRI
PANKAJ*

Versus

*MINISTRY OF FINANCE STATE OF M.P. THROUGH ITS PRINCIPAL
SECRETARY FINANCE AND OTHERS*

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Appearance:

Shri Sumit Mandloi - Advocate for the petitioner.

*Shri Sudeep Bhargava - Deputy Advocate General for respondent
Nos.1 and 2/State.*

Shri Prasanna Prasad - Advocate for respondent No.3.
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ORDER

Per. Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice

This petition is directed against the order dated 20.06.2024 passed by respondent No.3 - Joint Commissioner (Appeals), CGST, Customs & Central Excise, Indore (M.P.), whereby petitioner's appeal against order dated 06.04.2023 passed by the Adjudicating Authority thereby cancelling the GST registration, has been dismissed on the ground of limitation.

2. In the present petition, the petitioner has pleaded that he was issued a Show Cause Notice dated 23.03.2023 by respondent No.2 for cancellation of



GST registration due to non-filing of the GSTR 3B returns and despite his reply, the same was cancelled vide order dated 06.04.2023; against which he filed an appeal before respondent No.3- Joint Commissioner (Appeals).

3. The petitioner is aggrieved that his appeal was dismissed by respondent No.3 - Joint Commissioner, Appeals vide order dated 20.06.2024 without adverting to the merits of the case and merely on the grounds of limitation. Thus, setting aside of order dated 20.06.2024 and subsequent restoration of GST is sought for by the petitioner.

4. Upon hearing learned counsel for the parties and on perusal of record of this case, this Court finds that for non-filing of GST returns, the petitioner was issued a Show Cause Notice dated 23.03.2023, which reads as under:-

"Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1. Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

You are hereby directed to appear before the undersigned on 31/03/2023 at 10:30 AM.

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 23/03/2023."

5. On perusal of the said show cause notice, it is not clear that what violation has been made by the petitioner. Thus, the aforesaid show cause notice shows pure non-application of mind on the part of respondents.

6. Also the order dated 06.04.2023 passed by the respondent No.2 - Adjudicating Authority reads as under:-

"This has reference to your reply dated 30/03/2023 in response to the notice to show cause dated 23/03/2023.



Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s).

1. As the tax payer failed to file GSTR 3B for last 6 months. Last GSTR 3B return was filed for the month of August 2022 as per AIO portal. As per Section 29 of CGST Act, 2017 if, tax payer failed to file GSTR 3B return continuously for last 6 months or more is liable for cancellation. Tax payer submitted reply that they are facing financial crisis thus need 45 days for filing remaining GSTR 3B returns. Tax payer may file revocation of GST registration after filing all pending GSTR 3B returns as per CGST Act. Thus GST registration is hereby cancelled under Section 29 of CGST Act, 2017.

The effective date of cancellation of your registration is 23/03/2023 .

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and basis thereof is as follows:

The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

<i>Head</i>	<i>Central Tax</i>	<i>State Tax/UT Tax</i>	<i>Integrated Tax</i>	<i>Cess</i>
<i>Tax</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Interest</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Penalty</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Others</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Total</i>	<i>0.0</i>	<i>0.0</i>	<i>0.0</i>	<i>0.0</i>

7. Even the appeal filed by the petitioner against order dated 06.04.2023, has been dismissed by the Appellate Authority by the impugned order dated 20.06.2024 on the ground of limitation.

8. In the impugned order dated 06.04.2023, it is observed that the petitioner is required to pay the following amount, however, the amount is mentioned as "zero". Therefore, there was no occasion to deposit the amount because



the respondents did not mention the amount to be paid. The said communication also shows non-application of mind.

9. In view of the above, the orders dated 06.04.2023 passed by the Adjudicating Authority and order dated 20.06.2024 passed by the Appellate Authority are hereby set aside. Consequently, the petition is allowed.

10. However, liberty is granted to the respondents to issue fresh Show Cause Notice to the petitioner, if so advised, as per law.

11. It is, however, made clear that if the petitioner is still aggrieved by the order to be passed by the respondents, he may challenge the same before the appropriate forum as per law.

12. Pending interlocutory applications stand disposed of.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK RUSIA)
JUDGE

psm