Vimal Kumar v. Union Of India And Another

WRIT TAX No. 1296 of 2023 | Decision: 2023-11-08 | Allahabad High Court

Neutral Citation No. - 2023:AHC:215608-DB

Court No. - 39

Case :- WRIT TAX No. - 1296 of 2023

Petitioner :- Vimal Kumar Respondent :- Union Of India And Another Counsel for Petitioner :- Praveen Kumar Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan

Hon'ble Saumitra Dayal Singh,J. Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri Praveen Kumar, learned counsel for the petitioner, Sri Gaurav Mahajan, learned counsel for the respondent no.2, Sri Anant Kumar Tiwari, learned counsel for the Union.

2. Challenge has been raised to the order dated 3.5.2022 passed by the Superintendent, Sector-1, Range-4, CGST Commissionerate, Gautam Budh Nagar. By that order the respondent no.2 has cancelled the petitioner's registration under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as ‘the Act').

3. At the outset, Sri Gaurav Mahajan, learned counsel for respondent no.2 has raised a preliminary objection to the maintainability of the present writ petition. He would submit that petitioner has statutory alternative remedy of appeal.

4. However, in view of the facts obtaining in the present case, we are not inclined to sustain the objection thus raised. Then objection has been raised as to laches. We may deal with the same a little later. The matter has been heard and we proceed to dispose of the writ petition at this stage, in view of no dispute as to the conduct of proceedings.

5. Having heard learned counsel for the parties and having perused the records, it remains undisputed that originally the petitioner was granted registration under the Act with respect to the place of business disclosed in that registration. At the same time, on 4.8.2022 the petitioner was issued a show-cause notice seeking to cancel petitioner's registration. It reads as below:-

" Form GST REG-17/31

[See Rule 22(1)/ sub-rule (24) of rule 214]

Reference Number: ZA090822024333Q Date:04/08/2022

To

Registration Number (GSTIN/Unique ID): 09EUCPK4632N1Z7

VIMAL KUMAR

NAGAR MARKET.MILAK LAK LACHCHHI,GAUTAM BUDH NAGAR, Gautam Buddha Nagar,Uttar Pradesh,201203

Show Cause Notice for Cancellation of Registratio

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. Non compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed

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 05/08/2022 at 10:50 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 04/08/2022

Signature Not Verified

Place: Uttar Pradesh Digitally signed byDS Goods AND

Date: 04/08/2022 SERVICES TAX NETWORK (4)

Date:2022.08.04_13:30:19IST"

7. Also by means of the said show-cause notice petitioner's registration was suspended. Perusal of the notice further reveals that the date fixed for the proceedings was 5.8.2022 i.e. the date following the date of issuance of notice.

8. A reply thereto appears to have been received on record on 17.4.2022. However, learned counsel for the petitioner would contend no such reply came to be furnished. It is the further case of the petitioner, no proceeding was conducted over a long period of nine months. Yet, without any further notice, on 3.5.2023 the impugned

2

order was passed and the petitioner's registration cancelled retrospectively. Perusal of the order revels that the petitioner's registration was cancelled for reason of non existence of the principal place of business. For ready reference the contents of the order dated 3.5.2023 are quoted below:-

" FORM GST REG-19

[See Rule 22(3)]

Reference Number: ZA0905230231712 Date: 03/05/2023

To

VIMAL KUMAR

NAGAR MARKET, MILAK LAK LACHCHHI,GAUTAM BUDH NAGAR,Gautam Buddha Nagar, Uttar Pradesh,201203

GSTIN/UIN:09EUCPK4632N127

Application Reference No. (ARN): AA 090822017954Y Dated: 04/08/2022

Order for Cancellation of Registration

This has reference to your reply dated 17/08/2022 in response to the notice to show cause dated 04/08/2022 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. The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation. The portal is not taking the date of cancellation as 21.06.2021 hence it is being cancelled with effect from 22.06.2021. Although the party has filed GSTR-1 for the month of June-21 but there was no outward supply. The registration is being retrospectively cancelled as the principal place of business was found non-existence as informed by the state GST authorities.

The effective date of cancellation of your registration is 22/06/2021

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 furnished by you.

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

Head Central Tax State Tax/UT Tax

Integrated Tax Cess

Tax 0 0 0 0

3

Interest 0 0 0 0

Penalty 0 0 0 0

Others 0 0 0 0

Total 0.0 0 0 0.0

Place Range-4

Date:03/05/2023

Rajiv Kumar Singh

Superintendent

Sector-1, Gautambudha Nagar"

9. In such undisputed facts, we find fundamental defects in the

procedure adopted by the respondent- authority. In the first place the

notice dated 4.8.2022 was wholly non speaking. No fact allegation

was made in that notice as may have allowed the petitioner any opportunity to furnish reply thereto. Mere recital of the statutory requirement without specifying the facts, may not fulfill the requirement of the valid show-cause notice. It was not made known to petitioner that his registration was proposed to be cancelled for reason of doubt as to existence of principal place of business.

10. Second, the notice did not propose to grant real opportunity of hearing to the petitioner inasmuch as the issuing authority fixed the date for the proceeding on the next date itself.

11. Third, even if it is accepted that no order was passed on the next date and even if it is assumed for the sake of argument advanced by learned counsel for respondent no.2 that the petitioner had furnished a reply on 17.8.2022, it remains undisputed that no fresh date of hearing was communicated to the petitioner over a long period of nine months.

12. In the context of serious proceedings initiated to cancel petitioner's registration, it is wholly unacceptable that after adjourning the proceeding on 5.8.2022, the respondent no.2 chose to keep silent and did not issue any fresh show-cause notice or notice fixing any date in the proceeding.

13. Last, the reason given in the impugned order is not one with which the petitioner was confronted at the stage of show-cause. Unless, the petitioner had been granted due opportunity to rebut the allegation as to non-existence of principal place of business, such reason may never have arisen in the order passed in pursuance of such defective notice.

14. Whichever way the dispute is looked at, fundamental errors that go to the root of the matter are attributable to the conduct/ omission of the respondent no.2. In view of the above, the bar of statutory alternative remedy of appeal is waived in the peculiar facts of the present case. In face of such excessive gross fundamental defects, we do not find it a fit case to consider the issue of delay at this stage as may delay the enforcement of rules of natural justice, in the peculiar facts of this case, noted above.

15. As to the relief, since the suspension of registration has survived for more than a year, we decline any interference with the show-cause notice. At the same time, we provide that the petitioner may treat the impugned order to be the show-cause notice and file his reply thereto

within a period of two weeks. Subject to such compliance the respondent may fix a proper date for hearing with fourteen days notice and pass a reasoned and speaking order. The rights of the parties shall abide by the order to be passed by respondent no.2 in compliance of this order.

16. The writ petition stands disposed of. There shall be no order as to costs.

Order Date :- 8.11.2023 Abhishek Singh

(Shiv Shanker Prasad,J.) (Saumitra Dayal Singh,J.)

5

2023-11-09T19:17:42+0530 High Court of Judicature at Allahabad