

M/S Vidya Coal Depot v. Additional Commissioner Grade (Appeal) li And Another

WRIT TAX No. 394 of 2023 | Decision: 2023-10-05 | Allahabad High Court

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Neutral Citation No. - 2023:AHC:192420

Reserved

Court No. - 5

Case :- WRIT TAX No. - 394 of 2023

Petitioner :- M/S Vidya Coal Depot

Respondent :- Additional Commissioner Grade (Appeal) li And Another

Counsel for Petitioner :- R.R. Agarwal, Sr. Advocate, Niti Kumar

Kesharwani

Counsel for Respondent :- Rishi Kumar, A.C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Sri R.R. Agarwal, learned Senior Counsel assisted by Sri

Nitin Kumar Kesharwani, learned counsel for the petitioner and Sri Rishi

Kumar, learned ACSC for the respondents.

2. The instant Writ Tax is being entertained by this Court in view of the fact that G.S.T. Tribunal is not functional in the State of Uttar Pradesh pursuant to the Gazette notification of the Central Government bearing number CG-DL-E-14092023-248743 dated 14.09.2023.

3. By means of this writ petition, the petitioner has assailed the order dated 14.10.2022 passed by Assistant Commissioner Sector-14 Commercial Tax, Agra cancelling the GST registration of the petitioner under Section 29 (2) of U.P.G.S.T. Act. On appeal, the appellate authority by impugned order dated 1.12.2022 confirmed the order of cancellation of the registration of the petitioner. Further, a mandamus has been sought for restoration of the registration of the petitioner forthwith with effect from 18.08.2022.

4. Brief facts of the case are that Smt. Vidya Devi is the proprietor of the petitioner firm carrying the business of purchase and sale of coal on

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retail basis for which the GSTIN was granted. Since the petitioner's turn over was below Rs. 50 lacs, it opted for compounding scheme under

Section 9(1) of U.P.G.S.T Act as provided under Section 10 of the said Act. On 24.09.2022, a show cause notice was issued by the respondent no.2 to the petitioner proposing to cancel the registration of the petitioner for the reason assigned therein with the direction of the TTZ authority and written direction by JC (SIB) B Agra for cancellation of registration of all coal depot. The petitioner submitted the reply through registered post on 3.10.2022 in response to the notice dated 24.09.2022. Being dissatisfied with the reply of the petitioner, the registration of the petitioner was cancelled vide impugned order dated 14.10.2022 with effect from 18.8.2022. Feeling aggrieved by the aforesaid order, the petitioner preferred an appeal, but the same has also been rejected by order dated 1.12.2022. Hence the present petition.

5. Learned Senior Counsel for the petitioner has submitted that the petitioner has not violated any provision of GST Act; more precisely, contained in Section 29 read with Rule 21 of UPGST Act and Rules framed therein. The registration of the petitioner has been cancelled at the behest of direction issued by JC (SIB) B, Agra as well as the direction of TTZ authority, but neither a copy of such direction has been provided at any stage to the petitioner nor the same was annexed along with the copy of notice issued to the petitioner. He further submitted that the petitioner submitted a detailed reply by sending through registered post on 3.10.2022, which was received on 4.10.2022 in the office of respondent no.2, which fact is mentioned in the impugned order dated 14.10.2022. He further submitted that on perusal of the impugned order of cancellation, no reason whatsoever has been assigned. He further submitted that the first line of impugned order refers to the reply of the petitioner dated 4.10.2022 in response to the show cause notice dated 24.09.2022, but the very next line refers that no reply has been submitted.

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6. Further, he submitted that on the date fixed for submitting the reply, the order was not passed, hence, the impugned order cannot sustain. In support of his submission, learned Senior Counsel has placed reliance upon the judgment of Division Bench of this Court delivered in the case of M/S Videocon D2h Ltd. Vs. State of U.P. and 3 Ors. (Writ Tax No.243 of 2016), decided on 16.03.2016. He further submitted that on the date fixed, the authority ought not to have proceeded ex-parte, if petitioner did not appear, and if the order was passed on the next date, the

same cannot sustain in the eye of law. In support of his contention, he relied upon the judgment of Division Bench of this Court in the case of Videocon D2h (supra). He further submitted that assuming that the order was passed in view of the direction of the Hon'ble Apex Court in the case of M.C. Mehtra (Taj Trapaziam Matters) Vs. Union of India & Another reported in 1997 (2) SCC 353, but the same will not be applicable with regard to coal dealers as there is no such direction therein. In support of his contention, he further placed reliance upon the Division Bench Judgment of this Court passed in Writ Tax No.738 of 2011 (M/S Agra Coal Suppliers Vs. State of U.P., Thru' Principal Secy., Instt. Finance & Anr.), decided on 24.05.2011.

7. He further submitted that the GST Act is a complete Code in itself and the cancellation of registration, if any, has to fulfil the test of requirement mentioned in Section 29 of the UPGST Act read with Rule 21 of the Rules framed therein. In absence of any violation of provision in the said Section or Rule, the registration cannot be cancelled. In support of his submission, he also placed reliance upon the judgment of this Court passed in the case of Drs. Wood Products Lucknow Vs. State of U.P., 2022 NTN (Vol.80)-309.

8. He further submitted that even assuming without admitting that under the Environment (Protection) Act, 1986, the power has been exercised under Section 5 directing for cancellation of registration of the coal depot in Agra, the same cannot be passed as the said provision only

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applies to industry or any person involve or such operation, but the petitioner is only the coal dealer carrying on business of purchasing and selling, which do not pollute the environment. Therefore, it will not be covered by the said direction.

9. He further submitted that for the first time in the counter affidavit Annexure CA - 2 was brought on record showing that TTZ authorities have been constituted under the provision of Section 3 sub-clause (3) of Environment (Protection) Act, 1986 and the same has been constituted by way of Notification dated 17.05.1999, which was for a period of two years. He further submitted that thereafter in 2003, the period was again extended for two years only and thereafter in 2005, again the same was extended for two years. In view of the said fact, he submitted that period after 14.1.2005, TTZ authorities cannot act as its life had already been

expired and have no authority to proceed further or pass any direction in absence of any material brought on record. He further submitted that the direction issued by the TTZ authorities as per Annexures CA-2 and CA-3 of the counter affidavit filed by the Assistant Commissioner, Sector-14, Commercial Tax, Agra Range Agra, the orders or directions are totally without jurisdiction. He further submitted that taxing institute has to be strictly construed and it does not permit to import the provision of other Statute. In support of his submission, he next placed reliance upon the judgment of Hon'ble Apex Court passed in the case of Union of India and others Vs. Ind- swift Laboratories Limited, (2011) 4 SCC 635.

10. He further submitted that even assuming without admitting that some direction was given for maintenance of coal register, which has come in the counter affidavit for the first time, he submitted that even under the UPGST Act, the book of account are to be maintained and the petitioner is maintaining the same. He further submitted that the respondent no.2 himself has annexed Annexure-CA-21 the stock register of coal maintained by petitioner, along with the counter affidavit.

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Therefore, the allegations levelled against the petitioner for not maintaining the coal register is itself against the records.

11. He further refers that 56 meetings held by TTZ authority on 11.5.2022 were without any authority and even assuming without admitting if they have the power, then Agenda-3 as well as direction (iii) was relevant. But in the counter, copies of the letters/directions of the authorities/JC (SIB) B and other tax authority have been annexed, which show that direction was given to cancel the registration of all coal depot dealers of the area, which is beyond the direction. The authorities have misinterpreted the said direction.

12. He further submitted that for the first time along with counter affidavit an appendix has been annexed along with cancellation order Annexure- CA-24 at page no.243. He further submitted that the said appendix was neither there on the record nor any mention in the cancellation order nor before the first appellate authority nor any order communicating the said fact was ever been made to the petitioner.

13. Per contra, learned ACSC supports the impugned order and submits that the petitioner is not entitled for any relief from the Court as the petitioner did not adhere to the directions issued from time to time

under the Environment (Protection) Act as well as TTZ authorities constituted in pursuance of the N.C. Mehta case (supra). He further submitted that the petitioner was required to maintain the sale register of coal in detail as well as to acquire the no objection certificate from the Pollution Control Board and other authorities, but till date the same has not been uploaded. He further submitted that after following the due process under UPGST Act as well as Rule, the registration has rightly been cancelled. He further submitted that since the petitioner was not maintaining the sale register, which is a clear violation of GST Act and rule itself, therefore, the registration has rightly been cancelled. He further submitted that the petitioner has also not followed the mandate of TTZ authorities by not maintaining the coal register. He further submitted that

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the TTZ authorities is competent by subsequent notification, which is annexed in the counter affidavit and placed reliance upon the copy of the same by which the period valid up to 2024. He prays for dismissal of this writ petition.

14. The Court has perused the records.

15. Admittedly, it is not in dispute that the TTZ authorities have been constituted by Ministry of Environment and Forest, Government of India in exercise of power conferred by sub-clause 1 & 3 of Section 3 of Environment (Protection) Act, 1986, which is known as the Taj Trapezium Zone Pollution (Prevention and Control) Authority. In exercise of power under Sections 5 & 24 of the said Act, the direction can be issued in the interest of protecting the environment. Before proceeding further, it will be relevant to quote Section 5 of Environment (Protection) Act, which reads thus:-

“5 Power to give directions. Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

Explanation. For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct

(a) the closure, prohibition or regulation of any industry, operation or process;
or (b) stoppage or regulation of the supply of electricity or water or any other service “

16. On perusal of above quoted Section 5 of Environment (Protection)

Act, it is clear that for the protection of environment, a direction can be

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issued to officer or any authority and they shall be bound by the said
direction in respect of industry only.

17 In the case in hand, the petitioner is the coal trader and from his
business activities does not emanate any hazardous thing which is bad for
the environment.

18. Further, Section 24 of the Environment (Protection) Act, 1986
reads as under:-

“24. Effect of other laws;- (1) Subject to the provisions of
sub-section (2), the provisions of this Act and the rules or
orders made therein shall have effect notwithstanding
anything inconsistent therewith contained in any enactment
other than this Act.

(2) Where any act or omission constitutes an offence
punishable under this Act and also under any other Act then
the offender found guilty of such offence shall be liable to
be punished under the other Act and not under this Act”

19. From bare perusal of the aforesaid Section, it is evidently clear that
if an offence is punishable under this act and the offender is also found
guilty of said offence, offender shall be liable to punish under other act
and not under Environment (Protection), 1986 Act.

20. In other word, if any other enactment is in operation, then
environment act has overriding effect, but for punishing and such
punishment will be under that Act. Any direction given by the TTZ
Authorities for cancellation of registration has to be in accordance with
Section 29 read with rule 21 of GST Act and Rules therein. The GST
authorities cannot blindly follow said direction of TTZ Authorities.

21. The Hon'ble Apex Court in the case of Ind-Swift Laboratories
Limited (supra) has categorically held that a taxing statute must be
interpreted in the light of what is clearly expressed therein meaning
thereby when Section 29 read with rule 21 specifically provides a
complete mechanism statute under which the registration can be cancelled

and no aid can be taken by any other statute and the relevant para 20 is being quoted below:-

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"20. A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency. In support of the same we may refer to the decision of this Court in *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd.*

reported in (1961) 2 SCR 189 wherein this Court at Para 11 has observed as follows: -

"11..... In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."

22. The Division Bench of this Court in the case of *Agra Coal Suppliers (supra)* has held that in the area of TTZ, the registration cannot be cancelled in view of the Supreme Court's judgment of the coal dealer, a copy of said order has been filed here and relevant part of the said order is quoted below:-

"We may only note that the aforesaid judgment was passed in respect of industries operating within Taj Corridor and the pollution resulting therefrom including the air pollutant is affecting the quality of life including Taj Mahal. Nowhere in the said judgment has the Hon'ble Supreme Court restrained the persons from carrying on business of coal in the said area. The only reason in the instant case as to why the petitioner's licence was cancelled is based on the judgment of *M.C. Mehta (supra)*. In our opinion, as this is the only ground, based upon which the registration of the petitioner has been cancelled, the impugned order is nullity

In the light of that, the writ petition is allowed in terms of prayer clauses (i) and (ii), which read as under:-

(ii) that a suitable writ, order or direction in the nature of mandamus or prohibition be issued restraining/prohibiting the respondents from taking any action against the petitioner in view of the impugned order."

23. On perusal of the record, it further shows that 56 meetings have been held, a copy of which has been annexed as Annexure-7. The meeting dated 11.5.2022, the Agenda-3; direction (iii) refers with regard to coal dealer and the directions therein at page 131 to the counter affidavit, which is quoted below:-

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24. On perusal of the said direction, it only refers with regard to 26 coal dealers, the direction was for tax authorities for passing an appropriate order against 26 coal dealers only and not for all coal dealers of Agra.

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25. The Court is constrained to observe that the taxing authorities (GST) in the State of U.P on the zeal to pleasing the TTZ authorities have issued two letters dated 18.8.2022 and 19.09.2022, copy of which have been annexed and Annexure Nos. 17 & 18 directing for cancel the registration of all coal dealer of Agra, which was neither intend nor the direction by the TTZ authorities. The authorities are bent upon to take action against all coal dealers of Agra illegally, which also clears from the Joint Commissioner's letter dated 24.9.2022.

26. The records further reveal that the notice dated 24.09.2022, the date was fixed for 29.09.2022, when the authorities representative appeared (shown in Annexure-CA-26) on the date fixed i.e. 29.4.2022, the order ought to have been passed on the said date fixed itself but neither any order was passed on the date fixed i.e. 29.04.2022 nor any further date was fixed nor any notice for fixing the next date for 14.10.2022 was issued.

27. The Division Bench of this Court in the case of Videocond2h Ltd

(supra) has held as under:-

“The petitioner was directed to file reply by 10th February, 2016 which was not possible and, accordingly, the petitioner rightly applied for adjournment, which was granted fixing 15th February, 2016. The order sheet shows that the petitioner did not appear on 15th February, 2016, but at the same time, we find that if on the second date the petitioner did not appear, the Assessing Authority had the option to proceed ex-parte or fix another date, which in the instant case did not happen. If the Assessing Officer proceeded ex-parte, he could have fixed another date for ex-parte hearing or after recording the absence of the petitioner could have proceeded ex-parte and passed an assessment order on that date itself, which in the instant case did not happen. Therefore, any assessment order made on the next date i.e. on 16th February, 2016 becomes erroneous, as no date was fixed for 16th February, 2016 for making an assessment. Such assessment order passed on 11

16th February, 2016 without due notice is apparently in gross violation of the principles of natural justice. The principles engrafted in Sangram Singh Vs. Election Tribunal, AIR 1955 SC 425 is squarely applicable.

In the light of the aforesaid, we are of the opinion that the procedure relating to granting adequate opportunity as provided under Article 25 (1) of the U.P. VAT Act was not followed. Reasonable opportunity of being heard was not given. Proper inquiry was not made and therefore, the ex-parte assessment order cannot be sustained.”

28. Admittedly, no order of cancellation was passed on the date fixed for 29.4.2022, but thereafter on 14.10.2022 for which neither any notice nor any communication was made to the petitioner. Further, in the cancellation of registration order, it has wrongly been mentioned that no reply was submitted by the petitioner, but the next mentions the reply date. In view of the law laid down by the Division Bench of this Court passed in Agra Coal Suppliers (supra) impugned order cannot sustain.

29. The record further reveals that along with the cancellation order, an

appendix order has been filed in the counter affidavit to which learned Senior Counsel has argued that the appendix along with the cancellation order has been brought on record for the first time.

30. On the pointed query put to learned A.C.S.C as to whether the appendix annexed as Annexure-24 to the registration certificate was ever been brought on record before the first appellate authority or the same was communicated to the petitioner, he could not reply the same, so it appears that to improve the case of the revenue such appendix has been annexed for the first time by the officer/respondent in the counter affidavit.

31. The Hon'ble Apex Court in the case of Mohinder Singh Gill Vs. The Chief Election Commissioner, New Delhi AIR 1978 SC 851 has held that State authority cannot be permitted to supplement fresh reasons by means of affidavit.

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32. In view of the said fact and the law of the Hon'ble Apex court, the appendix along with the cancellation order cannot be any aid to the respondent authority.

33. It is a matter of common knowledge that under the GST Act, A/c book are to be maintained by every person. There is no finding at any stage to show that A/c book were not maintained by the petitioner. In absence of such finding, no violation of section/rule of UPGST Act/UPGST Rule can be made out against the petitioner.

34. Once, there is no violation of Section 29 read with rule 21, any action taken for cancellation of registration cannot sustain in the eye of law.

35. This Court in the case of Drs. Wood Products Lucknow (supra) in para nos. 11, 12, 13, 18, 20 and 21 has held as under:-

"11. Learned counsel for the petitioner argues that none of the grounds as contained in Section 29 of the Act were alleged or established against the petitioner. He has drawn my attention to the judgment of the Hon'ble Supreme Court in the case of Oryx Fisheries Private Limited v. Union of India and Ors. - (2010) 13 SCC 427 wherein the requirements and reasoning of a show- cause notice have been explained in detail by the Hon'ble Supreme Court.

12. He next relies upon the judgment of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Bangalore v. Brindavan Beverages (P) Ltd. and Ors. - (2007) 5 SCC 338 wherein the Hon'ble Supreme court has noticed the manner in which the show-cause notice was passed.

13. He also relies upon three judgments of this Court i.e Writ Tax No.348 of 2021 (Apparent Marketing Private Limited v. State of U.P. & Ors.) decided on 05.03.2022, Writ Tax No.626 of 2020 (M/s Ansari Construction v. Additional Commissioner Central Goods and Services Tax (Appeals) and Ors.) decided on 24.11.2020 & Writ Tax No.651 of 2021 (M/s S.S. Traders v. State of U.P. & Ors.) decided on 02.11.2021, wherein almost identical issues were considered by the High Court.

18. A perusal of the show-cause notice at the first instance, clearly depicts the opaqueness of the allegations levelled against the petitioner, which were only to the ground that 'tax payer found non-functioning/non-existing at the principal place of business'. The said show-cause notice did not propose to rely upon any report or any inquiry conducted to form the opinion and on what basis was the allegation levelled that the tax payer was found non-functioning; it does not indicate as to when the inspection was carried. A vague show-cause notice without any

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allegation or proposed evidence against the petitioner, clearly is violative of principles of administrative justice. Cancellation of registration is a serious consequence affecting the fundamental rights of carrying business and in a casual manner in which the show-cause notice has been issued clearly demonstrates the need for the State to give the quasi-adjudicatory function to persons who have judicially trained mind, which on the face of it absent in the present case. The order of cancellation of the registration on the ground that no reply was given is equally lacking in terms of a quasi-judicial fervor as the same does not contain any reasoning whatsoever. The show-cause notice issued after the petitioner had filed an application for revoking the cancellation of registration also smacks of lack of judicial training by the quasi-adjudicatory authorities under the GST Act as it merely shows that no satisfactory explanation was received within the prescribed time.

20. The petitioner in the ground of appeal and in the written argument filed in support of the appeal had extensively stated and produced evidence to support and contend that the commercial activity was being carried out by the petitioner, however, the same have not been touched upon by the Appellate Authority while deciding the appeal. The Appellate Authority has gone on a further tangent by placing reliance upon a report of the year 2018, which was neither confronted to the petitioner nor was ever part of the record based upon which the orders have been passed. This case clearly highlights the manner in which the quasi-judicial authorities and the appellate authorities are working under the GST Act. The manner of disposal as is present in the present case can neither be appreciated nor accepted.

21. I have no hesitation in recording that the said authorities while passing the order impugned have miserably failed to act in the light of the spirit of the GST Act. The stand of the Central Government before this Court is equally not appreciable as on the one hand they are alleging that excess goods were found for which the petitioner is liable to pay duty and on the other hand there is justification to the order passed and impugned in the present petition. "

34. In view of the aforesaid facts and circumstances of the case, the impugned orders dated 14.10.2022 & 01.12.2022 cannot sustain in the eye of law and are hereby quashed and the writ petition is allowed.

35. A mandamus is issued to the respondent-authorities No.1 to 3 to reinstate the petitioner's registration certificate immediately with effect from 18.8.2022 with all consequential benefits.

Order Date :- 05.10.2023 Pravesh Mishra/-

2023-10-09T10:15:27+0530 High Court of Judicature at Allahabad