Surendra Bahadur Singh v. State Of U.P. Thru. Prin. Secy. Commercial Tax (Gst) Lko. And 2 Others

WRIT TAX No. 172 of 2023 | Decision: 2023-08-23 | Allahabad High Court (Lucknow Bench)

Neutral Citation No. - 2023:AHC-LKO:56111-DB

Court No. - 3

Case :- WRIT TAX No. - 172 of 2023

Petitioner :- Surendra Bahadur Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Commercial Tax (Gst) Lko.

And 2 Others

Counsel for Petitioner :- Rishi Kumar Tripathi,Utkarsh Singh

Counsel for Respondent :- C.S.C.

Hon'ble Vivek Chaudhary,J.

Hon'ble Manish Kumar,J.

1. Heard Sri Rishi Kumar Tripathi, learned counsel for the petitioner and learned Standing Counsel for the State.

2. Present petition has been filed challenging the order dated 07.01.2023 whereby the registration of the petitioner was cancelled as well as the appellate order dated 01.07.2023 whereby the appeal was dismissed as being beyond the prescribed period of limitation.

3. The facts, in brief, are that the petitioner is a proprietorship concern engaged in civil contractual works and was registered under the GST Act. It appears that as the GST returns was not filed by the counsel, a show-cause notice dated 03.11.2022 was served. In the said show-cause notice, the reasons as prescribed were 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.

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 03.11.2023."

4. The case of the petitioner is that the petitioner did not have knowledge of the show-cause notice on account of COVID-19 upsurge, thus, the reply

could not be filed and an order came to be passed on 07.01.2023 (Annexure - 2) whereby registration was cancelled. The gist of the cancellation order is reproduced herein below:

"Reference Number: ZA090123054692M Dated: 07.01.2023

To

SURENDRA BAHADUR SINGH

M/S SURENDRA BAHADUR SINGH CONTRACTOR, CHOKAGHAT, WAZIRGANJ, GONDA,

Gonda, Uttar Pradesh, 271124

GSTIN/UIN: 09BAWPS0102G1ZL

Application Reference No. (ARN): AA091122013056T Dated: 03/11/2022

Order for Cancellation of Registration

This has reference to your reply dated 15.11.2022 in response to the notice to show cause dated 03.11.2022 Whereas no reply to notice to show cause has been submitted;

The effective date of cancellation of your registration is 07.01.2023.

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 fumished by you.

You are required to pay the following amounts on or before 17.01.2023 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

Interest 0 0 0 0

Penalty 0 0 0 0

Others 0 0 0 0

Total 0.0 0.0 0.0 0.0

Place: Uttar Pradesh

Date: 07.01.2023

SAMEER KUMAR SRIVASTAVA Assistant Commissioner

Gonda, Sector-3"

5. The petitioner could not prefer an appeal, which is prescribed under the Act, on account of Covid - 19 situation and the fact that the petitioner fell ill for which medical certificates were granted, as such,

the petitioner preferred a delay condonation application alongwith the appeal. The Appellate Authority was of the view that in view of the Bar created under Section 107 of the GST Act, the delay cannot be condoned, as such, he proceeded to dismiss the appeal holding that no power of condonation of delay exists in the statutory scheme of Section 107 of GST Act.

6. Learned counsel for the petitioner argues that although no fault can be found with the appellate order dismissing the appeal as Aappellate Authority does not have the power to condone the delay in terms of the scheme of the Act, however, he argues that the order cancelling the registration is without application of mind; he draws my attention to the impugned order dated 07.01.2023, which does not disclose any application of mind. He, thus, argues that the quasi judicial order which has an adverse effect on the right of the petitioner to run business as guaranteed under Article 19 of the Constitution of India, the same has been done without any application of mind which is neither the intent of the Act nor can it be held to be in compliance of the mandate of Article 14 of the Constitution of India. He further argues that as the appeal has not been decided on merit, the doctrine of merger will have no application and it is only the order dated 07.01.2023 which affects the petitioner and as the same is devoid of any reasons, the same can be challenged before this Court as decided by the Hon'ble Supreme Court in the case of Whirlpool Corporation v. Registrar of Trademarks, Mumbai and Ors. - (1998) 8 SCC 1.

7. He further places reliance on the judgment of this Court in the case of Om Prakash Mishra v. State of U.P. & Ors.; Writ Tax No.100 of 2022 decided on 06.09.2022 wherein this Court had recorded that every administrative authority or a quasi judicial authority should necessarily indicate reasons as reasons are heart and soul of any judicial or administrative order.

8. In the present case from the perusal of the order dated 07.01.2023, clearly there is no reason ascribed to take such a harsh action of cancellation of registration. In view of the order being without any application of mind, the same does not satisfy the test of Article 14 of the Constitution of India, as such, the impugned order dated 07.01.2023 (Annexure - 2) is set aside. The petition is

accordingly allowed.

9. It is, however, directed that the petitioner shall file reply to the show-cause notice within a period of three weeks from today. The Adjudicating Authority i.e. Assistant Commissioner, Gonda shall proceed to pass fresh order after giving an opportunity of hearing to the petitioner and after considering whatever defence he may take.

10. As the order dated 07.01.2023 is set aside, the Department concerned is at liberty to proceed in accordance with law.

(Manish Kumar, J.) (Vivek Chaudhary, J.)

Order Date :- 23.8.2023

Nitesh

2023-08-25T17:29:06+0530 High Court of Judicature at Allahabad, Lucknow Bench