M/S Makewell Pharma Gomti Nagar Lucknow Thru. Proprietor Saurabh Kumar Singh v. State Of U.P. Thru. Prin. Secy. Ministry Of Finance, Lucknow And Another

WRIT TAX No. 207 of 2023 | Decision: 2023-10-16 | Allahabad High Court (Lucknow Bench)

(1)

Neutral Citation No. - 2023:AHC-LKO:67482-DB

Court No. - 3

Case :- WRIT TAX No. - 207 of 2023

Petitioner :- M/S Makewell Pharma Gomti Nagar Lucknow Thru. Proprietor Saurabh Kumar Singh Respondent :- State Of U.P. Thru. Prin. Secy. Ministry Of Finance, Lucknow And Another Counsel for Petitioner :- Anurag Mishra Counsel for Respondent :- C.S.C.

Hon'ble Vivek Chaudhary,J. Hon'ble Manish Kumar,J.

1. Heard Sri Pranjal Shukla, learned counsel for the petitioner

and learned Standing Counsel for the State.

2. Present petition has been filed challenging the order dated

23.12.2022 passed by the Superintendent, Sector- 20, Lucknow i.e.

respondent no. 3, whereby the registration of the petitioner was

cancelled.

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 09.11.2022 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. returns furnished by you under Section 39 of the Central Goods and Services Tax Act, 2017.

Observations

Failure to furnish returns for a continuous period of six months

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

You are hereby directed to appear before the undersigned on 08/12/2022 at 11:00

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.

(2)

Please note that your registration stands suspended with effect from 09.11.2022."

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 23.12.2022 (Annexure - 3) whereby registration was

cancelled. The gist of the cancellation order is reproduced herein

below:

"Reference Number:ZA091222184601P Dated: 23.12.2022

To

SAURABH KUMAR SINGH

CP-1 VIJAY TOWER,VIJAY TOWER VASTU KHAND GOMTI NAGAR, LUCKNOW, Lucknow, Uttar Pradesh 226010

Application Reference No. (ARN): AA091122038401R Dated: 08/11/2022

Order for Cancellation of Registration

This has reference to your reply dated 09.12.2022 in response to the notice to show cause dated 08/11/2022.

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. No Response.

The effective date of cancellation of your registration is 23/12/2022

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 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: RANGE-IV

(3)

Date: 23/12/2022

Vikas Kapoor

Superintendent

Lucknow Sector-20"

5. 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 23.12.2022, 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 23.11.2022 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.

6. 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.

(4)

7. In the present case from the perusal of the order dated 23.12.2022, 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 23.12.2022 (Annexure - 3) is set aside. The petition is accordingly allowed.

8. 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. Superintendent, Lucknow Sector-20 shall proceed to pass fresh order after giving an opportunity of hearing to the petitioner and after considering whatever defence he may take.

9. As the order dated 23.12.2022 is set aside, the Department

concerned is at liberty to proceed in accordance with law.

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

Order Date :- 16.10.2023 Nitesh

2023-10-17T16:54:18+0530 High Court of Judicature at Allahabad, Lucknow Bench