

M/S Viraj Polymers Private Ltd. v. State Of U.P. And 3 Others

WRIT TAX No. 300 of 2022 | Decision: 2023-03-16 | Allahabad High Court

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Court No. - 6

Case :- WRIT TAX No. - 300 of 2022

Petitioner :- M/S Viraj Polymers Private Ltd. Respondent :- State Of U.P. And 3 Others Counsel for
Petitioner :- Naveen Chandra Gupta, Manish Gupta Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia, J.

1. Heard learned Counsel for the petitioner and learned Standing Counsel.

2. The present petition has been filed challenging the order dated 16.07.2021 whereby the registration of the petitioner was cancelled. The petitioner also challenges the order dated 06.10.2021 whereby the application for revocation of cancellation was also rejected as well as the appellate order dated 07.12.2021 whereby the appeal preferred by the petitioner has been dismissed.

3. The Counsel for the petitioner argues that although an appeal is prescribed, however, as the Tribunal has not yet been constituted under the GST Act, the present petition has been filed by the petitioner.

4. The contention of the Counsel for the petitioner is that a show cause notice was issued proposing for cancelling the registration on the ground that in the survey dated 02.06.2021, the firm was not found existence in the business place. He argues that the petitioner did not file any reply to the said show cause notice as he was not aware to the same which led to passing of the order dated 16.07.2021 by which the registration of the petitioner was cancelled. The petitioner thereafter filed an application under Section 30 of the GST Act seeking revocation of the cancellation of registration. In response to

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the said application, the petitioner filed was served with a show cause notice dated 28.08.2021 which is reproduced as under:

“Form GST REG-23 (See Rule 23(3))

Reference Number: ZA090821392558X Date: 28/08/2021

To VIJRAJ POLYMERS PRIVATE LIMITED GROUND FLOOR, 305, KANPUR, ANANDPURI TP NAGAR, Kanpur Nagar, Uttar Pradesh, 208023 GSTIN: 09AAFCV1526Q1ZS

Application Reference No.(ARN):AA090721146370E Dated: 29/07/2021

Show Cause Notice for rejection of application for revocation of cancellation of registration

This has reference to your application dated 29/07/2021 regarding revocation of cancellation of registration. Your application has been examined and the same is liable to be rejected for the following reasons:

1. Reason for revocation of cancellation - Others (Please specify) 1- ??? 13912 ?????? ?????? ?????? 27-8-2021 ??? 09AAACD7980K1Z5 ?? ?????? ?????? ?????? ?????? ?? ???? ?????? ???? ???? ???? ?????????????????

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.

SUDEEP KUMAR SRIVAS Assistant Commissioner Kanpur Sector-22”

5. The petitioner filed a reply to the said show cause notice stating that he was unable to understand the contents of the show cause notice dated 28.08.2021, however, he took a ground that business is being carried out as is clear from the ITR filed and as such, no ground for cancellation of registration is made out. The respondent thereafter passed an order dated 06.10.2021 rejecting the request of the
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petitioner on the ground that in the survey held, the business premises was found to be closed and it was informed by a person that the firm never opened and just opened 7 to 8 times in a month and a half. The authority further records in the order dated 06.10.2021 that the person told that sometimes the goods come on e-rickshaw. The order further records that upon scrutiny of the returns, it was found that huge amount of inward/ outward supply was shown by them whereas in both the surveys, the business premises was found to be closed. Against the order dated 06.10.2021, the petitioner preferred an appeal, which was dismissed by the appellate authority reiterating the grounds which led to passing of the order dated 06.10.2021.

6. The Counsel for the petitioner argues that the orders impugned are bad in law for the reasons more than one. He argues that cancellation of the registration was by an order which is totally a non-speaking order, and is violative of Article 14 of the Constitution of India and is

covered by the judgment of this Court in the case of M/s Chandra Sain vs Union of India and others (Writ-Tax No.147 of 2022), decided on 22.09.2022. He further argues that show cause notice served to the petitioner at the time of hearing of revocation application itself demonstrates the non-application of mind as it is completely vague and no one can be expected to give reply to such vague notice as extracted above. He further argues that while deciding the application for revocation, an extraneous piece of information received from a person was made the foundation, which information was never supplied to the petitioner nor was it part of the notice and was never supplied to the petitioner and thus, the order has been passed on the basis of information which was extraneous to the entire issue and thus, the same is also violative of Article 14 of the Constitution of India.

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7. He further argues that the appellate order does not take into consideration this aspect and as such, the same also suffers from vice of arbitrariness.

8. Considering the first submission, the case of the petitioner is squarely covered by the judgment of this Court in the case of M/S Chandra Sain (Supra) and the petition is to be allowed on that ground alone.

9. However, this Court intends to record the manner in which the GST authorities have issued the show cause notice which from the bare perusal of the notice dated 28.08.2021 is reckless and as vague as it can be. Even the order dated 06.10.2021 is not only arbitrary but a reckless exercise of power which led to denial of the rights of freedom and business guaranteed under Article 19 of the Constitution of India, as such, the orders and the show cause notice can never pass the test of Article 14 of the Constitution of India.

10. For all the above reasons, the impugned orders dated 16.07.2021, 06.10.2021 and 07.12.2021 are set aside. The writ petition stands allowed.

11. The respondents are directed to pass a fresh order after hearing the petitioner and taken into account the ITR returns filed by the petitioner, in accordance with law, with all expedition preferably within a period of four weeks from the date of production of certified

copy of this order.

12. Let a copy of this order be sent to the Ministry of Finance to ensure that this kind of show cause notice (as extracted above) are not issued in future.

Order Date :- 16.03.2023

akverma (Pankaj Bhatia, J)

2023-03-21T09:35:55+0530 High Court of Judicature at Allahabad