

Hemant Kumar v. State Of Up And 3 Others

WRIT TAX No. 262 of 2024 | Decision: 2024-03-05 | Allahabad High Court

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Neutral Citation No. - 2024:AHC:39951

Court No. - 1

Case :- WRIT TAX No. - 262 of 2024

Petitioner :- Hemant Kumar Respondent :- State Of Up And 3 Others Counsel for Petitioner :- Avinash Mishra Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

1. Heard learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the petitioner challenges the order in original for cancellation of registration dated January 17, 2023 passed by the respondent No.4/Assistant Commissioner, State Tax, Sector-5, Gorakhpur and the order passed in appeal dated August 2, 2023 by respondent No.3/Additional Commissioner, Grade-2 (Appeal) First, State Tax, Gorakhpur under Section 107 of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act").

3. Learned counsel appearing on behalf of the petitioner submitted that the order for cancellation of registration has been passed without any application of mind whatsoever and the same is clear from the very first two lines of the order dated January 17, 2023. The relevant part of the said order is quoted below:

"This has reference to your reply dated 09/01/2023 in response to the notice to show cause dated 09/12/2022 Whereas no reply to notice to show cause has been submitted;"

4. Learned counsel appearing on behalf of the petitioner submits that in the first line, the order states that a reply was filed by the petitioner on January 9, 2023 whereas second line records that no reply was submitted. He relies upon a Division Bench judgment of this Court in Writ Tax No.172 of 2023 titled as Surendra Bahadur Singh v. State of U.P. and others decided on August 23, 2023, wherein the Division Bench has held as follows:

"6. Learned counsel for the petitioner argues that although no fault can be found with the appellate order dismissing the appeal as Appellate 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."

5. Learned counsel for the petitioner further relies upon a coordinate Bench judgment of this Court in Writ Tax No.1476 of 2022 titled as M/s Namo Narayan Singh v. State of U.P. and others decided on October 10, 2023 to emphasis the point that providing of reasons in order is of essence in judicial proceedings.

6. In the present case, the facts are similar to one in Surendra Bahadur Singh's case (supra), wherein the appeal was barred by time under Section 107 of the Act. However, the Division Bench in Surendra Bahadur Singh's case (supra) took into consideration the original order and set aside the same being non-reasoned and allowed the petitioner therein to file reply to the show cause notice.

7. In light of the above, I am of the view that the orders impugned herein are liable to be set aside. Accordingly, the order in original

dated January 17, 2023 and the appellate order dated August 2, 2023 are quashed and set aside. The petitioner is directed to file its reply to the show cause notice within three weeks from date and the adjudicating authority is directed to proceed de novo and pass order after granting opportunity of hearing to the petitioner.

8. With the above directions, the writ petition is allowed.

Order Date :- 5.3.2024 Kuldeep

(Shekhar B. Saraf,J.)

2024-03-06T10:43:55+0530 High Court of Judicature at Allahabad