M/S Aryavart Agencies,Lucknow Thru. Proprietor Rajeev Uniyal v. State Of U.P. Thru. Prin. Secy. Ministry Of Finance,Lko. And 2 Others

WRIT TAX No. 40 of 2024 | Decision: 2024-03-18 | Allahabad High Court (Lucknow Bench)

Neutral Citation No. - 2024:AHC-LKO:23259

Court No. - 6

Case :- WRIT TAX No. - 40 of 2024

Petitioner :- M/S Aryavart Agencies,Lucknow Thru. Proprietor Rajeev Uniyal Respondent :- State Of U.P. Thru. Prin. Secy. Ministry Of Finance,Lko. And 2 Others Counsel for Petitioner :- Anit Vishal Srivastav,Devendra Kumar Singh,Ramesh Chandra Srivastava Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. The present petition has been filed challenging the order dated 14.02.2023 whereby the registration of the petitioner was cancelled in exercise of powers under Section 29 of the Central Goods and Services Tax Act as well as the order dated 05.02.2024 whereby the appeal preferred by the petitioner was dismissed.

2. The facts in brief are that the petitioner was registered with the GST Authorities and is involved in the business of providing services to the Government. It is stated that on 14.01.2023, the petitioner was served with a show cause notice highlighting the fact that the petitioner has failed to furnish return for a continuous period of six months under Sections 39 of the CGST Act and was called upon to file a reply within 30 days.

3. It is stated that the petitioner could not reply the said show cause notice on account of the fact that the petitioner who is responsible to run the business was not well and also on account of the fact that all the papers were submitted to their counsel but the said counsel did not appear before the appellate authority nor did he place the version of the petitioner and on this ground the appeal was also dismissed before the appellate authority which led to the passing of the order dated 14.02.2023 (Annexure-1). The entire order is being reproduced herein below:

"Reference Number: ZA0902231247630 Date: 14/02/2023

To RAJEEV UNIYAL

44/28 KA, APARNA BHAWAN, HAZARATGANJ,

HAZARATGANJ, Lucknow, Uttar Pradesh, 226001

GSTIN/UIN:09AAVPU7215J1ZU

Application Reference No. (ARN): AA0901230805195 Dated: 14/01/2023

Order for Cancellation of Registration

This has reference to your reply dated 14/02/2023 in response to the notice to show cause dated 14/01/2023 Whereas no reply to notice to show cause has been submitted;

The effective date of cancellation of your registration is 14/02/2023

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 furnished by you.

You are required to pay the following amounts on or before 24/02/2023 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: 14/02/2023

Priya Garg Assistant Commissioner

Lucknow Sector - 1

4. The petitioner preferred an appeal against the said order along with the hard copy before the appellate authority on 10.1.2024 which was dismissed on the ground of limitation. The Appellate Authority held that the starting point of limitation of filing of an appeal would be the date of the order.

5. The Counsel for the petitioner argues that the appeal has been dismissed as being beyond limitation as such the doctrine of merger

would not apply and the petitioner is fair entitled to seek judicial review of the order dated 14.02.2023 on the ground that the same is non speaking order. This Court while deciding Writ Tax No.147 of 2022 (M/S Chandrasen, Sarda Nagar, Lucknow vs Union of India and others) had held that the order of cancellation of registration or any other order passed either on administrative or on judicial side is without any reason and prima facie, without application of mind, the same does not stand the test of scrutiny under Article 14 of the Constitution of India.

6. Thus, following the said judgment rendered in the case of M/s Chandrasen (Supra), the writ petition deserves to be allowed.

7. Learned Standing counsel, on the basis of instructions, has informed this Court that the pet itioner has already filed the returns on 29.6.2023 along with requisite amount of tax and late fee etc.

8. Accordingly, the writ petition is allowed. The order dated 14.02.2023 is set aside and the petitioner is permitted to appear before the respondent along with the reply to show cause notice and the certified copy of this order within three weeks from today. In case, the petitioner appears along with the reply and the certified copy of this order, the respondent shall proceed to pass a fresh order in accordance with law.

(Alok Mathur, J.)

Order Date :- 18.3.2024 RKM.

2024-03-21T12:36:21+0530 High Court of Judicature at Allahabad, Lucknow Bench