

M/S Balaji Brick Field Thru. Its Proprietor Mr. Pramit Kumar Mishra Hardoi v. Union Of India Thru. Secy. Ministry Of Finance New Delhi And 5 Others

WRIT TAX No. 31 of 2023 | Decision: 2023-02-03 | Allahabad High Court (Lucknow Bench)

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Court No. - 4

Case :- WRIT TAX No. - 31 of 2023

Petitioner :- M/S Balaji Brick Field Thru. Its Proprietor Mr. Pramit Kumar Mishra Hardoi Respondent :- Union Of India Thru. Secy. Ministry Of Finance New Delhi And 5 Others Counsel for Petitioner :- Sanjjeva Shankhdhar, Durga Prasad Dubey Counsel for Respondent :- A.S.G.I.

Hon'ble Vivek Chaudhary, J.

Heard learned counsel for the petitioner and Shri Saurabh Shukla holding brief of Shri Shiv P. Shukla, the learned counsel for respondent no.2 and learned Standing Counsel for the State.

Present petition has been filed challenging the order dated 23.01.2023 passed by the respondent no.5, whereby the Appeal No.11 of 2023, U.P. Goods and Service Tax Act, 2017 filed against the cancellation of registration has been dismissed with further direction to revoke the GST registration of the petitioner.

The facts, in brief, are that the petitioner is the sole proprietary of the firm engaged in the business of civil work contract and was registered under GST Act. It appears that the GST return was not filed by the counsel and thereafter a show cause notice dated 09.07.2022 was issued, directing the petitioner to furnish a reply to the notice within seven working days from the date of service of the notice.

The case of the petitioner is that he has not been able to get the show cause notice issued by the respondent and, therefore, he could not submit the reply within the stipulated time and, thus, an order came to be passed on 01.09.2022 whereby registration of the petitioner was cancelled. Against the said order, the petitioner filed an appeal which was dismissed by the appellate authority on the ground of delay.

Learned counsel for the petitioner submits that since he has not been heard while passing the order dated 01.09.2022, as such the present petitioner is also entitled for the benefit of the order passed by this Court in Writ Tax No.145 of 2022 (Technosum India Pvt. Ltd. Lucknow Vs. Union of India and others) dated 26.09.2022. In the said judgment, the Court has held that the impugned order does not assign any reason whatsoever for cancelling registration of the petitioner and is passed only on

the ground that reply to the show cause notice is not given. The non-submission of reply to the show cause cannot be a ground for cancellation of the registration. The relevant Paragraphs 9 and 10, of the judgment in Technosum India Pvt. Ltd. Lucknow (Supra), read as under:-

"9. 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 03.01.2022 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.

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

In view thereof, the present petitioner is also entitled for the same relief. The benefit of the order dated 26.9.2022 passed in Writ Tax No.145 of 2022, shall also be made available to the present

petitioner.

Accordingly, the present petition is allowed. The order dated 01.09.2022 as well as the appellate order dated 23.01.2023, 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 as well as the copy of the judgment passed in Writ Tax No.145 of 2022 (Technosum India Pvt. Ltd. Lucknow Vs. Union of India and others) dated 26.09.2022, within three weeks from today. In case, the petitioner appears along with the reply and the certified copy of this order, the respondents shall proceed to pass a fresh order in accordance with law.

[Vivek Chaudhary,J.]

Order Date :- 3.2.2023 -Amit K-

2023-02-03T14:31:34+0530 High Court of Judicature at Allahabad, Lucknow Bench