

Shandar Husain Rizvi v. State Of U.P. Thru. Prin. Secy. State Tax (Gst/ Vat)U.P. Civil Secrett. Lko. And 2 Others

WRIT TAX No. 14 of 2023 | 2023-01-20 | Allahabad High Court (Lucknow Bench)

Official court-text rendition | Finin2min Judgment Intelligence

Case :- WRIT TAX No. - 14 of 2023

Petitioner :- Shandar Husain Rizvi Respondent :- State Of U.P. Thru. Prin. Secy. State Tax (Gst/ Vat)U.P. Civil Secrett. Lko. And 2 Others Counsel for Petitioner :- Shivam Sharma Counsel for Respondent :- C.S.C.

Heard learned counsel for the petitioner and the Sri Sanjay Sareen, learned Standing Counsel for the State.

Present petition has been filed challenging the order dated 09.01.2023 passed by the respondent no.2, whereby the appeal filed against the cancellation of GST registration dated 08.04.2022 passed by the respondent no.3, has been dismissed.

The facts, in brief, are that the petitioner is a small time businessman running a shop 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 26.3.2022 was issued on the ground of non-filing of the return for six months directing the petitioner to furnish 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 08.04.2022 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 lack of sufficient cause to done the delay.

Learned counsel for the petitioner submits that since he has not been heard while passing the order dated 08.04.2022, as such the present petitioner is also entitled for the benefit of the order passed by this Court in Writ Tax No.147 of 2022 (Chandra Sarin Vs. Union of India) dated 22.09.2022. 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 8 and 9, of the judgment in Chandra Sarin (Supra), read as under:-

"8. In the present case from the perusal of the order dated 13.02.2020, 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 13.02.2020 (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, Lucknow shall proceed to pass fresh order after giving an opportunity of hearing to the petitioner and after considering whatever defence he may take."

In view thereof, the present petitioner is also entitled for the same relief. The benefit of the order dated 22.9.2022 passed in Writ Tax No.147 of 2022, shall also be made available to the present petitioner.

Accordingly, the present petition is allowed. The orders dated 08.04.2022 as well as the appellate order dated 09.1.2023, 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 Chandra Sarin (Supra), dated 22.09.2022, 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.

Order Date :- 20.1.2023 Arjun/-

2023-01-20T17:09:35+0530 High Court of Judicature at Allahabad, Lucknow Bench