HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 7463/2021

M/s. Avon Udhyog, Through Partner, Mia, Ii Phase, Basni Jodhpur - 342005, Through Its Partner Dhirendra Sankhla S/o Late Shri Ml Sankhla, Aged About 45 Years, R/o A-218, Shastri Nagar, Jodhpur.

----Petitioner

Versus

1. State Of Rajasthan, Through The Commissioner Of State Tax, Rgst, Kar Bhawan, Ambedkar Circle, Bhawani Singh Road, C Scheme, Jaipur
2. Assistant Commissioner, State Tax (Gst), Ward - Ii, Circle Anti Evasion, Jodhpur.
3. Assistant Commissioner, State Tax (Gst), Ward - Iii, Circle Anti Evasion, Jodhpur.
4. Deputy Commissioner, Circle - C, Jodhpur - Ward - 3, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Sharad Kothari
For Respondent(s) : Mr. Hemant Dutt

JUSTICE DINESH MEHTA

Order

05/07/2021

1. By way of present writ petition, petitioner has challenged notice-cum-order dated 04.02.2021, vide which, petitioner's registration certificate has been suspended.

2. Informing the requisite facts of the case, Mr. Sharad Kothari, learned counsel for the petitioner, stated that a search was conducted on petitioner's premises on 03.02.2021, in furtherance whereof, respondent No.4 issued a notice dated 04.02.2021, proposing to cancel petitioner's registration certificate.

3. Simultaneous with the notice proposing to cancel the registration, the respondent No.4, with the same stroke of pen, kept his registration certificate under suspension with immediate effect.

4. Learned counsel for the petitioner, submitted that pursuant to the notice of cancellation of registration dated 04.02.2021, petitioner has furnished his detailed reply/ response on 20.03.2021, yet the respondents have not passed any final order regarding petitioner's registration, due to which petitioner's right to trade has been kept in suspended animation.

5. Inviting Court's attention towards the provisions contained in Section 29 of the Rajasthan Goods and Service Tax Act, 2017, amended vide Finance Act, 2020 and Rules 21 and 22 of the Rules framed thereunder, Mr. Kothari, learned counsel for the petitioner, submitted that though suspension of registration certificate does not envisage grant of opportunity of hearing in express terms, but the principles of natural justice warrants that before suspending a license, a reasonable opportunity of hearing must be granted to an assessee.

6. He submitted in the alternative, that the Assessing Authority is required to take a final decision pursuant to notice of cancellation of registration at the earliest, so that a businessman's fundamental rights enshrined and guaranteed under Article 19(1)(g) of the Constitution of India are not kept in abeyance on account of suspension of registration.

7. Mr. Kothari, learned counsel for the petitioner, invited Court's attention towards various provisions of the Rules of 2017, more particulalry, Rule 22(3) of the Rules and submitted that on expiry of 30 days, the order of suspension of registration of the petitioner

automatically comes to an end because Rule 22(3) mandates an order of cancellation to be passed within 30 days.

8. Mr. Hemant Dutt, learned counsel for the respondents, submitted that petitioner, who was required to file reply to the notice within a period of 7 days, has failed to file reply within the stipulated time and the same came to be filed as late as on 20.03.2021. Hence, the petitioner cannot raise a grievance and level allegation of protraction of the proceedings by the respondent Assessing Authority.

9. Heard.

10. Sub-rule (3) of Rule 22 reads thus:-

> "***22.- Cancellation of registration***
> *(1) XXX XXX*
> *(2) XXX XXX*
> *(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted under rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1) or under sub-rule (2A) of rule 21A, cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of Section 29."*

11. A perusal of above quoted sub-rule (3) clearly shows that the authority concerned is required to cancel the registration (if required) within a period of 30 days of the date of the reply to the show cause notice. True it is, that the petitioner did not file reply by 15.02.2021, as was required by the notice dated 04.02.2021, but then the notice dated 04.02.2021, requiring the petitioner-assessee to file reply within 7 days from the date of service of the notice itself was contrary to the statutory provisions. A bare

reading of sub-rule (2A) reveals that the Assessing Authority is required to give 30 days' time to explain the reason why the registration ought not to be cancelled.

12. Be that as it may. The petitioner-assessee has already filed reply before the respondent No.4 on 20.03.2021 and more than three months' time has since passed.

13. Without pronouncing upon petitioner's contention that on passing of a period of 30 days of the reply, the suspension stands annulled or vitiated, this Court hastens to add that provisions of sub-rule (3) of Rule 22 clearly mandates an order to be passed within 30 days of receipt of the reply. Suspension of a registration of an assessee has its own consequences – it brings the entire business of an assessee to a stand still. In a way it is worse than cancellation. Against cancellation, an assessee can take legal remedies but against suspension pending an enquiry, even if the assessee chooses to take remedies, the authorities or the Court(s) would normally show reluctance.

14. In the opinion of this Court, the proceedings of cancellation of registration cannot be kept hanging fire on any pretext, including that assessee failed to file reply within the time allowed. Authority issuing the notice is statutorily bound to pass order in terms of sub-rule (3) of Rule 22 of the Rules.

15. Having regard to the facts and circumstances of the case and also considering that the petitioner has omitted to file reply within time allowed and even within 30 days of receiving the notice dated 04.02.2021, the present writ petition is disposed of with a direction to the petitioner to put forth all the submissions including the submission about automatic revocation of suspension

advanced before this Court. Petitioner may file supplementary reply/written arguments.

16. The petitioner and/or his representative may personally appear before the respondent No.4 on 07.07.2021, who, in turn, shall provide opportunity of hearing to the petitioner and pass speaking order in accordance with law on or before 14.07.2021.

17. In case the order passed by the respondent No.4 is prejudicial to the petitioner, its right to take up appropriate legal remedies against such order shall obviously stand reserved, as this Court has not pronounced on merit of the case.

18. The stay application also stand disposed of accordingly.

(DINESH MEHTA),J

38-skm/-