

A.F.R.

Court No. - 17

Case :- WRIT - C No. - 21692 of 2021

Petitioner :- Drs Wood Products Lucknow Thru. Its Partner Sh. Arun Jindal

Respondent :- State Of U.P. Thru. Prin. Secy. Tax And Registration Lko. Andors.

Counsel for Petitioner :- Alok Singh, Suyash Agarwal

Counsel for Respondent :- C.S.C., Digvijay Nath Dubey

Hon'ble Pankaj Bhatia, J.

1. Heard Shri Suyash Agarwal and Shri Alok Singh, learned counsel for the petitioner, learned Standing Counsel for the State and Shri Digvijay Nath Dubey, learned counsel for respondent no.4.

2. The present petition has been filed 18.01.2021 whereby the appeal preferred by the petitioner has been rejected. The said appeal was preferred against the order dated 15.07.2020 whereby the application for revocation of the cancellation of the registration was rejected.

3. The facts, in brief, are that the petitioner is a partnership firm carrying on business of manufacture and trading of Veneer and was granted the registration number under CGST Act 2017. It is also claimed that prior to the enforcement of the GST, the petitioner was registered under the UPVAT Act and the CST Act also. It is also claimed that the assessments were carried out in respect of the petitioner establishment under the VAT Act and the CST Act for the assessment year 2017-18. The petitioner claims to be carrying out the business from the registered place of business as registered with the GST Authorities and are paying taxes. A show-cause notice dated 08.05.2020 was issued to the petitioner under Rule 22(1) of the GST Rules whereby it was alleged that on the basis of the information which has come

to the notice of the Assistant Commissioner it appears that your registration is liable to be cancelled for the following reasons:

"1. Taxpayer found Non-functioning/Not Existing at the Principal Place of Business"

4. Subsequent thereto, an order came to be passed on 22.05.2020 (Annexure - 12) wherein the following has been recorded:

*"This has reference to your reply dated 17/05/2020 in response to the notice to show cause dated 08/05/2020
Whereas no reply to notice to show cause has been submitted.*

The effective date of cancellation of your registration is 22/05/2020."

5. The petitioner while trying to upload his E-Way Bill came to know that the registration of the petitioner - firm has been cancelled on 08.05.2020, as such, the petitioner moved an application for revocation of the order dated 08.05.2020 in terms of the provisions contained in Section 30 of the U.P. GST Act, 2017 (hereinafter referred to as 'the Act'). The said application specifically stated that the fact with regard to cancellation came to the knowledge of the petitioner in the month of June, 2020. In any case, the said application was within the time prescribed under Section 30 of the Act. In response to the said application filed by the petitioner, a show-cause notice was again issued on 13.06.2020 stating that the application for revocation is liable to be rejected for the following reason:

"firm was properly issued show cause notice vide ref number ZA090520010436Y, no satisfactory explanation was received within prescribed time."

6. In response to the said show-cause notice, the petitioner moved an application seeking 15 days extension of time to give a reply in view of the marriage of the daughter of the petitioner scheduled on 24.06.2020. Without considering the said application, an order came to be passed on 15.07.2020 rejecting

the application for revocation of cancellation of the registration on the reasons as recorded in the show cause notice that no satisfactory explanation was received within the prescribed time. The order is quoted hereinbelow:

"This has reference to your reply filed vide ARN AA0906203362399 dated 13/06/2020. The reply has been examined and same has not been found to be satisfactory for the following reasons:

1. *Any Supporting Document – Others (Please specify) – firm was properly issued show cause notice vide ref number ZA090520010436Y. no satisfactory explanation was received within prescribed time.*

Therefore, your application is rejected in accordance with the provisions of the Act."

7. Aggrieved against the said order, an appeal was filed under Section 107 of the Act before the Appellate Authority constituted under the Act. In the grounds of appeal, which are on record as Annexure - 17, the petitioner demonstrated by means of averments that the firm of the petitioner was running from the premises in question. During the pendency of the appeal, the petitioner also filed written submission before the Appellate Authority in which all the documents as deemed fit by the petitioner were presented before the Appellate Authority. The Appellate Authority dismissed the appeal recording that an inspection was carried out on 20.05.2020 in respect of the premises of the petitioner and on the site in question, the committee comprising of three persons did not find any activity pertaining to the firm over the property in question. It also records that the partner of the firm Shri Arun Jindal was called on phone but he could not give any clear reply. It was also recorded that in the said inspection at the given place of interest, no stocks or commercial activity was found and the partners of the firm did not co-operate in the inspection. It also records that in the inspection report another firm in the name of

M/s Star Enterprises, 24 Gandhi Nagar, Sitapur with another GST number was found working and on the spot, the owner of the firm Mr. Imran was found and on the said place the said firm M/s Star Enterprises was found to be working. The said report, which was relied upon, also referred to the license from the Forest Department. It was also recorded that in the inspection report there was a mention that over the property bearing Gata No.56, BKT, Lucknow, the said firm M/s Star Enterprises had taken the property on lease from one Shri Arun Jindal and nothing was found in respect of the petitioner firm over the property in question. It was also recorded that even earlier in a search carried out on 15.05.2018 by SIB, it has come to the knowledge that on the place in question, no activity of manufacturing or selling was being carried out and no commercial activities were found and based upon the said report, he formed an opinion that the firm was got registered only with a view to help in evasion of taxation.

8. Learned counsel for the petitioner has placed on record a show-cause notice dated 28.05.2021 issued to the petitioner - firm by the CGST alleging that on the basis of inspection carried out at the petitioner premises, goods found in the premises were stored contrary to the rules and thus, were liable to be confiscated. He also argues that on 20.06.2020, the goods of the petitioner were seized on the ground that the goods were being carried on the basis of expired E-Way bill.

9. On the basis of the facts as narrated above, learned counsel for the petitioner argues that the show-cause notice is bereft of any facts on the basis of which the petitioner was called upon to file a reply. He argues that the show-cause notice is meant to put the assessee on guard and to give a reply in respect of alleged charges against him, whereas in the present

case the show-cause notice is totally silent with regard to the averments contained or reply to be made against the petitioner.

10. Learned counsel for the petitioner further argues that the show-cause notice which led to the initial cancellation of the registration was never served upon the petitioner and in any case, if the petitioner had applied for revocation of cancellation of registration in terms of the mandate of Section 30 of the Act, it was incumbent upon the Assessing Authority to have passed an order considering the larger mandate of Section 30 of the Act, which has not been done. He further argues that the Appellate Authority has erred in dismissing the appeal on the grounds, which are totally extraneous to the proceedings as the inquiry of the year 2018 or inspection report dated 20.03.2020 were neither the basis of the show-cause notice nor were ever supplied to the petitioner nor was the petitioner ever confronted to give reply and response to the said inquiry. He further argued that in any event, on the one hand the allegations against the petitioner are that no commercial activities were being carried out at the place of registration on the other hand the CGST as well as the UP GST Authorities have alleged shortage of finished goods and seizure of the goods on account of expired E-Way bill respectively. He draws my attention to Section 29 of the Act, which provides for cancellation of registration and on the grounds on which the same can be done.

Section 29 of the Act is being quoted hereinbelow:

"Section 29: Cancellation or Suspension of Registration.-

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where, -

(a) the business has been discontinued, transferred fully for any reason including death of the

proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person is no longer liable to be registered under Section 22 or Section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of Section 25:

Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,–

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) *The cancellation of registration under the Central Goods and Service Tax Act, 2017 (12 of 2017) shall be deemed to be a cancellation of registration under this Act.*

(5) *Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:*

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) *The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed."*

11. Learned counsel for the petitioner argues that none of the grounds as contained in Section 29 of the Act were alleged or established against the petitioner. He has drawn my attention to the judgment of the Hon'ble Supreme Court in the case of ***Oryx Fisheries Private Limited v. Union of India and Ors. - (2010) 13 SCC 427*** wherein the requirements and reasoning of a show-cause notice have been explained in detail by the Hon'ble Supreme Court.

12. He next relies upon the judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Central Excise, Bangalore v. Brindavan Beverages (P) Ltd. and Ors. - (2007) 5 SCC 338*** wherein the Hon'ble Supreme court has noticed the manner in which the show-cause notice was passed.

13. He also relies upon three judgments of this Court i.e ***Writ Tax No.348 of 2021 (Apparent Marketing Private Limited v. State of U.P. & Ors.)*** decided on **05.03.2022**, ***Writ Tax No.626 of 2020 (M/s Ansari Construction v. Additional Commissioner***

Central Goods and Services Tax (Appeals) and Ors.) decided on **24.11.2020 & Writ Tax No.651 of 2021 (M/s S.S. Traders v. State of U.P. & Ors.)** decided on **02.11.2021**, wherein almost identical issues were considered by the High Court.

14. In the light of the said learned counsel for the petitioner argues that the petition is liable to be allowed.

15. Learned Standing Counsel on the other hand justifies the order on the ground that on an investigation being carried out on 20.03.2020 by a committee at the main place of business of the firm neither any business activity was found nor any stock of goods or any employee was found and on the contrary, the unit of another firm M/s Star Enterprises was found working on the same declared business site. No books of account were available at the time of investigation at the place of business. It is further argued that when the partner of the firm was trying to be contacted on telephone, he did not co-operate in the investigation and despite notice, no books of account/entries were produced before the Investigating Officer. He further argues that the petitioner did not even submit a reply to the show-cause notice and thus, justifies the impugned order and states that the petition is liable to be dismissed.

16. Shri Digvijay Nath Dubey, learned counsel appearing for respondent no.4 argues that on the date of investigation, no goods were found and accordingly, the registration was cancelled and it appears that after the cancellation of the registration, some goods might have been placed by the petitioner at the place. He argues that in terms of the show-cause notice issued by the DGGI as contained on Page - 141 and 142, on 03.12.2020 a search was carried out and a *panchnama* of the goods were prepared, which indicated various goods as were seized in terms of the said *panchnama*,

which is recorded as RUD - 1 to the show-cause notice dated 28.05.2021, to this he argues that after the cancellation of the registration, the petitioner might have kept the goods there.

17. In the light of the submissions made at the Bar, this Court is to consider whether the action taken against the petitioner in respect of cancellation satisfies the test of the requirement of Section 29 of the Act or not?

18. A perusal of the show-cause notice at the first instance, clearly depicts the opaqueness of the allegations levelled against the petitioner, which were only to the ground that 'tax payer found non-functioning/non-existing at the principal place of business'. The said show-cause notice did not propose to rely upon any report or any inquiry conducted to form the opinion and on what basis was the allegation levelled that the tax payer was found non-functioning; it does not indicate as to when the inspection was carried. A vague show-cause notice without any allegation or proposed evidence against the petitioner, clearly is violative of principles of administrative justice. Cancellation of registration is a serious consequence affecting the fundamental rights of carrying business and in a casual manner in which the show-cause notice has been issued clearly demonstrates the need for the State to give the quasi-adjudicatory function to persons who have judicially trained mind, which on the face of it absent in the present case. The order of cancellation of the registration on the ground that no reply was given is equally lacking in terms of a quasi-judicial fervor as the same does not contain any reasoning whatsoever. The show-cause notice issued after the petitioner had filed an application for revoking the cancellation of registration also smacks of lack of judicial training by the quasi-adjudicatory authorities under the GST Act as it merely shows that no satisfactory explanation was received within the prescribed time.

19. The order rejecting the application for revocation of cancellation of registration takes the matter to the height of arbitrariness inasmuch as no reasons are recorded as to why the request for revocation of cancellation of registration could not be accepted and discloses absence of application of mind with regard to the averments contained in the application filed by the petitioner for revocation of cancellation of registration. It is also not clear as to why the request of the petitioner to adjourn the matter because of the marriage of his daughter was not even considered prior to passing of the rejection order dated 15.07.2020.

20. The petitioner in the ground of appeal and in the written argument filed in support of the appeal had extensively stated and produced evidence to support and contend that the commercial activity was being carried out by the petitioner, however, the same have not been touched upon by the Appellate Authority while deciding the appeal. The Appellate Authority has gone on a further tangent by placing reliance upon a report of the year 2018, which was neither confronted to the petitioner nor was ever part of the record based upon which the orders have been passed. This case clearly highlights the manner in which the quasi-judicial authorities and the appellate authorities are working under the GST Act. The manner of disposal as is present in the present case can neither be appreciated nor accepted.

21. I have no hesitation in recording that the said authorities while passing the order impugned have miserably failed to act in the light of the spirit of the GST Act. The stand of the Central Government before this Court is equally not appreciable as on the one hand they are alleging that excess goods were found for which the petitioner is liable to pay duty and on the other hand

there is justification to the order passed and impugned in the present petition.

22. Finding the orders contrary to the mandate of Section 29 and 30 of the Act as well as the principles of adjudication by the quasi-judicial authorities, the orders impugned dated 18.01.2021 (Annexure - 19) and 15.07.2020 (Annexure - 16) cannot be sustained and are set aside.

23. The registration of the petitioner shall be renewed forthwith.

24. In the present case, the arbitrary exercise of power cancelling the registration in the manner in which it has been done has not only adversely affected the petitioner, but has also adversely affected the revenues that could have flown to the coffers of GST in case the petitioner was permitted to carry out the commercial activities. The actions are clearly not in consonance with the ease of doing business, which is being promoted at all levels. For the manner in which the petitioner has been harassed since 20.05.2020, the State Government is liable to pay a cost of Rs.50,000/- to the petitioner. The said cost of Rs.50,000/- shall be paid to the petitioner within a period of two months, failing with the petitioner shall be entitled to file a contempt petition.

25. The writ petition is ***allowed*** in above terms.

Order Date :- 5.8.2022
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[Pankaj Bhatia, J.]

