



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE B M SHYAM PRASAD

WRIT PETITION NO. 1135 OF 2023 (T-RES)

BETWEEN:

M/S S P METALS
HAVING ITS OFFICE AT NO 7,8
SRIGANDHADHAKAVAL VILLAGE
YESHWANTHPURA HOBLI
BENGALURU - 560091
REGISTERED UNDER GST ACTS 2017
REPRESENTED BY ITS PROPRIETOR
SRI S SARAVANAN
REPRESENTED BY PROPRIETOR
SRI S SARAVANAN

...PETITIONER

(BY MS. LEKHA G.D. ADVOCATE FOR
SRI. K.J. KAMATH., ADVOCATE)



AND:

1. ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES
LOCAL GOODS AND SERVICES TAX OFFICE - 080
1ST FLOOR, KIADB BUILDING
14TH CROSS, PEENYA 2ND STAGE
BENGALURU - 560058



2. SUPERINTENDENT OF CENTRAL TAX
BANGALORE NORTH WEST COMMISSIONERATE
BMTC BUILDING, 2ND FLOOR,
SOUTH WING, BMTC COMPLEX
SHIVAJINAGAR
BANGALORE -560051

...RESPONDENTS

(BY SRI. K.HEMAKUMAR, AGA FOR R1;

SRI. JEEVAN J. NEERALGI, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER OF CANCELLATION OF REGISTRATION IN FORM GST REG-19 DTD 30.11.2022 IN REFERENCE NO.ZA291122235281X PASSED BY THE R1 UNDER RULE 22(3) OF THE GST ACT AGAINST THE PETITIONER AS PER ANNEXURE-C AND DIRECT THE R1 TO REVOKE THE CANCELLATION OF THE REGISTRATION OF THE PETITIONER FORTHWITH AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN B GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is aggrieved by the first respondent's order dated 30.11.2022 (Annexure-C). The first respondent by this order has cancelled the petitioner's GST registration. The petitioner also seeks direction to revoke the cancellation and for certain other reliefs.



2. The petitioner's case is that the second respondent visited his business premises on 11.10.2022 and seized certain invoices/documents under a mahazar. The second respondent called him to his office on 15.11.2022 purportedly for investigation, but he was then arrested. He was in judicial custody from 16.11.2022 until he was admitted to bail and released on 08.12.2022. In the meanwhile, the first respondent has allegedly issued Show Cause Notice on 17.11.2022 to the petitioner alleging that he has issued invoices and bills without actual supply of either goods or services in violation of the provisions of the Central Goods and Services Tax Act, 2017 and the Rules thereunder to enable wrongful availing or utilizing input tax credit or refund of tax.

3. Ms. Lekha G.D, the learned counsel for the petitioner, relying upon assertions in this regard argues that when the petitioner was still in custody,



the first respondent has cancelled the GST registration on 30.11.2022 recording that on examination of the petitioner's case against cancellation he is of the opinion that it should be cancelled. If the petitioner was in custody from 16.11.2022 until 08.12.2022 when he was admitted to bail and released, the petitioner could not have been served with Show Cause Notice dated 17.11.2022 and he could not have issued any response, but the GST registration is cancelled based on the said Show Cause Notice holding that petitioner's response is considered. It would be irrefutable that the cancellation of GST registration is without due opportunity and is arbitrary, and as such, this Court must interfere with the impugned order.

4. Sri. K.Hemakumar, the learned Additional Government Advocate for the first respondent and Sri. Jeevan J. Neeralgi, the learned counsel for the



second respondent, submit that penal proceedings have been initiated against the petitioner for issuing bills and invoices without actual supply of goods or services and the cancellation must necessarily be an outcome of an investigation against the petitioner. However, neither can substantiate this argument based on a reference to the reasons assigned in the impugned order. As pointed by Ms. Lekha G.D., the second respondent has recorded what appears to be a stereotype opinion because in the circumstances of the case it cannot even be argued that the petitioner could have issued response. Therefore, this Court must interfere with the impugned order on the ground of arbitrariness.

5. At this stage, both Sri. Jeevan J. Neeralgi and Sri. K.Hemakumar, submit that the petitioner must be called upon to furnish the returns for the period for which the returns are not filed as a condition for revocation of the cancellation as against



a cancellation by this order without any condition. In response, Ms. Lekha G.D. submits that the petitioner would file the returns within a period of four [4] weeks. In the light of the foregoing, the following:

ORDER

- [a] The petition is allowed. The second respondent – the Superintendent of Central Tax - is permitted to pass suitable orders for revocation of the cancellation of the registration, if the petitioner files Returns for the relevant period for which returns have to be filed.

- [b] The petitioner shall be at liberty to file returns within a period of four [4] weeks from the date of receipt of a certified copy of this order, and if the returns are accordingly filed, the second respondent shall pass suitable



orders within a period of two [2]
weeks therefrom.

**Sd/-
JUDGE**

RB