

Neutral Citation No. - 2023:AHC:188861

Reserved

Court No. - 5

Case :- WRIT TAX No. - 931 of 2023

Petitioner :- M/S World Solution

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Yashonidhi Shukla, Vedika Nath

Counsel for Respondent :- C.S.C

Hon'ble Piyush Agrawal, J.

1. Heard Sri Yashonidhi Shukla learned counsel for the petitioner and Sri Rishi Kumar learned ACSC for the respondents.
2. The instant writ tax is being entertained by this Court in view of the fact that GST Tribunal is not functional in the State of U.P. Pursuant to the Gazette notification of the Central Government being No. CG-DL-E-14092023-248743 dated 14.9.2023.
3. By means of the present writ petition the petitioner has assailed the order dated 3.2.2023 passed by the Assistant Commissioner, Sector 25, State Tax, Kanpur Nagar by which the registration of the petitioner has been cancelled as well as the order dated 17.7.2023 by which the appeal preferred by the petitioner has been dismissed by the respondent no.2 as barred by limitation as provided under section 107(4) of the UPGST Act (herein after referred to as the Act).
4. Learned counsel for the petitioner submits that registration of the petitioner has been cancelled without following the provision of section 29 of the Act and has passed the order dated 3.2.2023. He further submits that from a perusal of the order cancelling the

registration of the petitioner has been passed mechanically without application of mind and without assigning any reason.

5. Learned counsel for the petitioner further submits that the appeal preferred by the petitioner has been dismissed on the ground of delay. He further submits that detailed reason was assigned for filing the appeal beyond limitation but the same was not considered.

6. He further argues that the quasi judicial order which has an adverse effect on the right of the petitioner to run business as guaranteed under Article 19 of the Constitution of India and the same has been taken away without any application of mind which is neither the intent of the Act nor can it be held to be in compliance of the mandate of Article 14 of the Constitution of India. In support of his submissions he has relied upon the judgments of this Court in Writ Tax No. 100 of 2022 (**Om Prakash Mishra vs. State of U.P. And others**) decided on 6.9.2022 and in Writ Tax No. 147 of 2022 (**M/s Chandra Sain, Sharda Nagar Lucknow through its proprietor Mr.Chandar Jain vs. U.O.I. Through Secretary, Ministry of Finance, Mnew Delhi and 5 others**) decided on 22.9.2022. He further submits that while passing the cancellation order dated 3.2.2023 no reason has been assigned which is against the decision of the Apex Court in the case of **Whirlpool Corporation vs. Registrar of Trademarks, Jumbai and others** (1998) 8 SCC 1). He prays for allowing the writ petition.

7. Per contra, learned ACSC supports the impugned orders dated 3.2.2023 and 17.7.2023 and submits that the proceedings have already been initiated against the petitioner and as the petitioner has not filed its return and tax, therefore, the registration

of the firm has been cancelled. He further submits that the appeal was preferred by the petitioner beyond the period of limitation as provided under section 107(4) of the Act, therefore the appeal has been rejected. He prays for dismissal of the writ petition.

8. After hearing the learned counsel for the parties the Court has perused the record.

9. Admittedly from the perusal of the order dated 3.2.2023 it transpires that no reason has been assigned for cancellation of the registration of the petitioner. The order of cancellation is in the teeth of various judgments of this Court as also referred to above. The reasons are heart and soul of any judicial and administrative order. In absence of the same the order cannot be justified in the eye of law. Further since the appeal of the petitioner was dismissed on the ground of delay, this Court finds that the doctrine of merger will have no application considering the facts and circumstances of the present case.

10. In **M/s Chandra Sain** (supra) this Court has held as follows:

“6. Learned counsel for the petitioner argues that although no fault can be found with the appellate order dismissing the appeal as Appellate Authority does not have the power to condone the delay in terms of the scheme of the Act, however, he argues that the order cancelling the registration is without application of mind; he draws my attention to the impugned order dated 13.02.2020, which does not disclose any application of mind. He, thus, argues that the quasi judicial order which has an adverse effect on the right of the petitioner to run business as guaranteed under Article 19 of the Constitution of India, the same has been done without any application of mind which is neither the intent of the Act nor can it be held to be in compliance of the mandate of Article 14 of the Constitution of India. He further argues that as the appeal has not been decided on merit, the doctrine of merger will have no application and it is only the order dated 13.02.2020 which affects the petitioner and as the same is devoid of any reasons, the same can be challenged before this Court as decided by the Hon'ble Supreme Court in the case of Whirlpool Corporation v. Registrar of Trademarks, Mumbai and Ors. - (1998) 8 SCC 1.

7. He further places reliance on the judgment of this Court in the case of *Om Prakash Mishra v. State of U.P. & Ors.*; Writ Tax No.100 of

2022 decided on 06.09.2022 wherein this Court had recorded that every administrative authority or a quasi judicial authority should necessarily indicate reasons as reasons are heart and soul of any judicial or administrative order.

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. ”*

11. In **Om Prakash Mishra** (supra) this Court has held as follows:

“I am not inclined to accept the submission of the counsel for the petitioner in so far as it relates to the appellate order dated 29.03.2022. However, I am inclined to accept the submission of the petitioner made against the order dated 15.03.2019. A perusal of the Annexure no.2, makes it clear that no reasons whatsoever have been recorded while passing the order of cancellation of the registration of the petitioner's firm. The order clearly being without any reason cannot be accepted to be an order in accordance with law.

It is essential that every administrative authority or a quasi judicial authority should indicate the reasons, howsoever, brief they may be before passing an order of the nature which has been done by the authority. The order passed dated 15.03.2019 has a very harsh consequences and the same being without any reason whatsoever, fails to satisfy the test of a judicial order and suffers from the vice of violation of Article 14 of the Constitution of India, as such, the order dated 15.03.2019 is set aside with direction to the petitioner to file his response to the show cause notice before the respondent no.3 who shall pass fresh order after giving an opportunity of hearing to the petitioner with all expedition. The petitioner would be at liberty to place whatever documents he pleases to rely upon in support of his defense. In view of the fact that the order dated 15.03.2019 is set aside, the appellate order, although not interfered with, is also set aside.

The writ petition is allowed in terms of the said order. ”

12. In view of the above, the order dated 3.2.2023 passed by the Assistant Commissioner, respondent no.3 is hereby quashed.

13. However, it is directed that the petitioner shall file reply to the show cause notice within a period of three weeks from today. The Adjudicating Authority, the Assistant Commissioner, Kanpur,

shall proceed to pass fresh order after giving an opportunity of hearing to the petitioner and after considering whatever defence he may take.

14. The writ petition succeeds and is allowed.

Order Date :- 3.10.2023
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