

GAHC010245592023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6366/2023

SANJOY NATH
S/O- RABINDRA NATH, VILLAGE- DEFOLALA VILLAGE ROAD, DEFOLALA
BUBRIGHAT, PATHARKANDI, KARIMGANJ, ASSAM, PIN-788724

VERSUS

THE UNION OF INDIA AND 2 ORS
MINISTRY OF FINANCE, REP. BY THE SECRETARY TO THE MINISTRY OF
FINANCE, GOVERNMENT OF INDIA, NEW DELHI

2: THE PRINCIPAL COMMISSIONER CGST CENTRAL EXCISE AND SERVICE
TAX KEDAR ROAD
GST BHAWAN
GUWAHATI ASSAM

3: THE SUPERINTENDENT
CGST BONGAIGAON-4 ASSAM

Advocate for the Petitioner : MS. M L GOPE

Advocate for the Respondent : SC, GST

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

29.11.2023

Heard Mr. J. Roy, learned senior counsel assisted by Mr. S.K. Saha, learned counsel for the petitioner and Dr. B.N. Gogoi, learned Standing Counsel, GST for all the respondents.

2. It is the case of the petitioner that he is the sole proprietor of a firm in his name and he got himself registered as a dealer under the Central Goods and Services Tax Act, 2017. When he applied for registration, the petitioner was issued a registration certificate in Form GST REG-06 with Registration no. 18AMNPN3159NIZA and GSTIN no. 18AMNPN3159NIZA w.e.f. 16.11.2019.

2.1. The petitioner was issued a show cause notice on 08.07.2022 asking him to show cause as to why the registration certificate issued under the Central Goods and Services Tax [CGST] Act, 2017 in his favour should not be cancelled due to non-furnishing of returns in terms of Section 39 of the CGST Act, 2017 for a continuous period of 6 [six] or more months. The petitioner was thereby directed to furnish his reply within a period of 30 [thirty] days from the date of service of the said show cause notice and was also asked to appear in person before the authority issuing the show cause notice on 07.08.2022. In response to the show cause notice dated 08.07.2022, the petitioner submitted his reply on 08.08.2022 and made submissions before the authority at the time of hearing. Thereafter, the impugned order dated 11.08.2022 came to be passed whereby the petitioner's GST registration has been cancelled under Section 29[2][c] of the CGST Act, 2017 read with Rule 22 of the CGST Rules, 2017 for not furnishing returns for a continuous period of 6 [six] or more months.

3. Section 39[1] of the CGST Act, 2017 *inter alia* requires a registered person to furnish a return for every calendar month or part thereof, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed.

4. Mr. Roy, learned senior counsel appearing for the petitioner has submitted that due to reasons beyond his control, the petitioner could not submit the returns required to be submitted under Section 39[1] of the CGST Act, 2017 for a period of about 6 [six] months or more. He has, however, submitted that the petitioner is ready and willing to comply with all the formalities required as per proviso to sub-rule [4] of Rule 22 of the CGST Rules, 2017.

5. As per Section 29[2][c], an officer, duly empowered, may cancel the GST registration of a person from such date, including any retrospective date, as he deems fit, where any registered person, has not furnished returns for a continuous period of 6 [six] months. Rule 22 of the CGST Rules, 2017 has laid down the procedure for cancellation of the registration. For ready reference, Rule 22 of the CGST Rules, 2017 is quoted herein below in its entirety :-

Rule 22 : Cancellation of Registration

[1] Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under Section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.

[2] The reply to the show cause notice issued under sub-rule [1] shall be furnished in FORM REG-18 within the period specified in the said sub-rule.

[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.

[4] Where the reply furnished under sub-rule [2] [or in response to the notice

issued under sub-rule (2A) of Rule 21A] is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20 :

Provided that where the person instead of replying to the notice served under sub-rule [1] for contravention of the provisions contained in Clause [b] or Clause [c] of sub-section [2] of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20.

[5] The provisions of sub-rule [3] shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

6. It is discernible from a reading of the proviso to sub-rule [4] of Rule 22 of the CGST Rules 2017 that if a person who has been served with a show cause notice under Section 29[2][c] of the CGST Act, 2017 is ready and willing to furnish all the pending returns and to make full payment of the tax itself along with applicable interest and late fee, the officer, duly empowered, can drop the proceedings and pass an order in the prescribed Form i.e. Form GST REG-20.

7. The learned counsel for the parties have also referred to an Order dated 11.10.2023 passed in a writ petition, W.P.[C] no. 6003/2023 [Sri Bhupender Pal Singh vs. The State of Assam and 2 others] wherein the petitioner therein was similarly situated like the present petitioner.

8. Having regard to the fact that the GST registration of the petitioner has been canceled under Section 29[2][c] of the CGST Act, 2017 for the reason that the petitioner did not submit returns for a period of 6 [six] months and more; and the provisions contained in the proviso to sub-rule [4] of Rule 22 of the CGST Rules, 2017, this Court is of the considered view that in the event the petitioner approaches the officer, duly empowered, by furnishing all the pending returns and make full payment of the tax dues, along with applicable interest and late fee, the officer duly empowered, has the authority and jurisdiction to drop the proceedings and pass an order in the prescribed Form.

7. In such view of the matter, this writ petition is disposed of by providing that the petitioner shall approach the concerned authority within a period of 2 [two] months from today seeking restoration of his GST registration. If the petitioner submits such an application and complies with all the requirements as provided in proviso to sub-rule [4] of Rule 22 of the CGST Rules, 2017, the concerned authority shall consider the application of the petitioner for restoration of his GST registration in accordance with law and shall take necessary steps for restoration of GST registration of the petitioner as expeditiously as possible. With the observations made and the direction given above, the writ petition is disposed of. No cost.

JUDGE

Comparing Assistant

