

Court No. - 2

Case :- WRIT TAX No. - 912 of 2022

Petitioner :- M/S Shree Shyamji Traders

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Praveen Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

Heard Mr. Praveen Kumar, learned counsel for the petitioner and Mr. Arvind Mishra, learned Standing Counsel for the State.

By means of present petition, the petitioner is praying, inter alia, for the following relief:

"i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 31.3.2022 passed by respondent no. 3 in Appeal No. GST/0134/2021 and GST/0042/2021 (AY 2020-21) (Annexure No. 12).

ii) issue a writ, order or direction in the nature of certiorari quashing the impugned rejection of revocation application dated 26.3.2021 and impugned order of cancellation of registration dated 16.12.2020 passed by respondent no. 4."

Brief facts of the case as stated in the writ petition, are that the petitioner is engaged in the business of Iron and Steel scrap and got registered under the GST law. On 27.10.2020, the SIB Unit of GST Department conducted a survey at the business premises of the petitioner in which it is alleged that at the time of the survey, neither any business activity was found nor any business premises of the petitioner was found at the given address. Thereafter on 18.11.2020 a notice was issued to the petitioner to show cause as to why the registration granted to the petitioner may not be cancelled. The petitioner could not reply to the show cause notice dated 18.11.2020 due to some medical exigency and thereafter on 16.12.2020 the respondents had cancelled the registration of the petitioner. The petitioner has filed a revocation application on 1.2.2021 to which again a show cause notice was issued in which neither any date nor time has been mentioned for personal appearance of the petitioner. The petitioner has submitted explanation before respondent no. 5 on 5.3.2021 in which he again prayed for opportunity of personal hearing however vide order dated 26.3.2021, the revocation application was rejected. Feeling

aggrieved to the said order, the petitioner filed two separate appeals i.e. one against the order dated 16.12.2020 and the other against the order dated 26.3.2021, in which, he also filed written submission taking plea that the impugned orders have been passed without giving proper opportunity of personal hearing to the petitioner as required under the Act, however, the appeals have been rejected vide order dated 31.3.2022. Hence the present petition.

Learned counsel for the petitioner submits that after cancellation of registration, notice was issued in which neither any date nor time nor place was mentioned for personal hearing of the case. He submits that the registration of the petitioner was cancelled without assigning any reason to which a revocation application was filed. He further submits that after filing of revocation application, again a notice was issued in which also neither any date nor time nor place was mentioned for personal hearing. He further submits that the appeals were also dismissed without assigning any proper reason. He submits that neither any material was brought on record against the petitioner nor proper opportunity was given, therefore, the impugned orders are bad and liable to be set aside.

Per contra, learned Standing Counsel supports the impugned order and submits that at the time of survey, neither any business activity was found nor the business premises was found on the given address, therefore, the proceedings have rightly been initiated against the petitioner in which the registration has been cancelled.

After hearing learned counsel for the petitioner, the Court has perused the records.

The record reveals that cancellation order does not refer any reason for cancelling the registration of the petitioner. Further on the revocation application a notice was issued wherein also no details for submission of reply or personal hearing was mentioned and the revocation application was rejected without assigning any proper reason.

The registration of the petitioner can be cancelled as per Section 29 (2) of the Act, which contemplates five conditions i.e. (a) to (e). The record shows that none of the conditions as contemplated under Section 29 (2) (a) to (e) violated by the petitioner has been referred in the impugned order. Once the conditions stipulated under the statute have not been violated or any specific finding as per the law has not been recorded, the registration of the petitioner is not liable to be cancelled.

The record shows that cancellation order has neither refer any violation of conditions mentioned under Section 29 (2) (a) to (e) of the GST Act nor reason has been mentioned for cancellation of registration of the petitioner. Further in the impugned order neither any reference whatsoever nor any finding was recorded to the effect of the material used against the petitioner nor any finding was recorded that the alleged material used against the petitioner was confronted with. In the absence of any such finding, the appellate order cannot be sustained in the eyes of law.

This Court in the **Writ Tax No. 348 of 2021 (Apparent Marketing Pvt. Limited Vs. State of UP and others)** decided on 5.3.2022 has set aside the impugned order with liberty to the respondent authority to issue a notice in accordance with Section 29 (2) of the Act.

In view of aforesaid facts and circumstances of the case as well as law laid down by this Court in the aforesaid case, the impugned orders dated 31.3.2022, 26.3.2021 and 16.12.2020 are hereby set aside.

It is open for the respondent authority to issue a fresh notice on any specified ground mentioned under Section 29 (2) of the Act in accordance with law. The proceedings, if initiated, may be decided on its own merit, without being prejudiced by any of the observations made herein above.

The writ petition is **allowed** with the cost of Rs. 10,000/- to be paid by the Proper Officer, respondent no. 4 to the petitioner within one month from today.

List on 20th January, 2025 in Chamber.

In the meantime, compliance affidavit be filed by the proper officer, i.e. respondent no. 4 .

Order Date :- 28.11.2024

Rahul Dwivedi/-