

Neutral Citation No. - 2025:AHC:41763

Reserved on 17.03.2025

Delivered on 24.03.2025

Court No. - 10

Case :- WRIT TAX No. - 996 of 2024

Petitioner :- Ups Scs India Private Limited

Respondent :- Additional Commissioner Grade 2 And Another

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Suyash Agarwal for the petitioner and Mr. Ravi Shanker Pandey, learned ACSC for the respondent-State.

2. By means of present petition, the petitioner is assailing the order dated 17.5.2024 passed by Additional Commissioner, Grade -2 (Appeal -1), State Tax, Noida, order dated 11.11.2023 passed by Assistant Commissioner, Noida Sector 10, Gautam Buddha Nagar, under Section 30 of UPGST Act, and the order dated 5.9.2023 passed by Assistant Commissioner, Noida Sector 10, Gautam Buddha Nagar, under Section 29 (2) of UPGST Act.

3. Learned counsel for the petitioner submits that the petitioner is a private limited company incorporated under the Indian Companies Act, having separate GST registrations of its two business verticals in India i.e. (i) freight forwarding (GST IN 09AACU2488B1ZE) and (ii) logistics and distribution also known as contract logistics business in commercial parlance (GSTIN 09AACU2488B2ZD). He further submits that on

25.8.2023, a show cause notice was issued to the petitioner in Form GST REG -17 under Rule 22 (1) and sub rule (2A) of Rule 21 A of UP GST Rules 2017 proposing to cancel the registration of the petitioner on the premise that the dealer had contravened Section 25 (2) of GST Act 2017 and thereafter the registration of the petitioner was suspended on 25.8.2023. He submits that in response to the show cause notice, the petitioner has submitted online reply for seeking revocation of the GST registration, but on 5.9.2023, respondent no. 2 passed the order of cancellation of registration in Form REG 19 under Rule 22 (3) of the Rules. Thereafter the petitioner has submitted revocation application on 4.10.2023 explaining the detailed reasons thereof. He submits that respondent no. 2 has served a show cause notice for rejection of revocation application on 5.10.2023 to which detailed reply was submitted by the petitioner on 9.10.2023 however being not satisfied with the same, the revocation application has been rejected vide order dated 11.11.2023; aggrieved by said order, the petitioner filed an appeal on 9.2.2024, but the same has also been dismissed vide order dated 17.5.2024.

4. Learned counsel for the petitioner further submits that under the GST Act, the power to cancel the registration has been granted under Section 29 (2) read with Rule 21. He submits that the respondent authorities being the *quasi* judicial authority have to act in accordance with law as mandated under GST Act as well as the Rules. He submits that there is no provision prescribed under Section 25 of the Act, which empower the authorities to cancel the registration without whispering a word that issue in hand falls

under the provisions of Section 29 (2) of the GST Act.

5. Learned counsel for the petitioner further submits that show cause notice was issued for cancellation of registration in contravention of the provisions of Section 25 (2) of the Act but for the first time, the appellate Court has passed the order on a new ground to which the petitioner was never put to notice or opportunity of hearing, before passing the order.

6. In support of his submission, learned counsel for the petitioner has relied upon the following judgements :-

- (i) ***Image Labs Vs. State of UP*** (2024) 20 Centax 200 All
- (ii) ***Hemand Kumar Vs. State of UP*** (2024) 19 Centax 300 All
- (iii) ***Jai Nath Rai Construction Vs. State of UP*** (2024) 22 Centax 482 All
- (iv) ***Siddha Mahajan Pvt. Ltd. Vs. State of UP*** (2024) 19 Centax 395 All
- (v) ***Saini Engineering and Civil Contractor Vs. State of UP*** (2024) 20 Centax 509 All
- (vi) ***Namo Narayan Singh Vs. State of UP*** (2023) 12 Centax 48 All
- (vii) ***Aggarwal Dyeing and Printing Works Vs. State of Gujarat*** (2022) 66 GSTL 348 (Guj).

7. *Per contra*, learned ACSC has supported the impugned order and submits that since the petitioner is discharging the services having same HSG code, therefore, the proceedings has rightly been initiated against the petitioner. He further submits that the petitioner has violated Section 25 (2) of the Act, therefore, the proceedings has rightly been initiated against the petitioner.

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

9. The record shows that the petitioner has granted two registration numbers for two business i.e. (i) freight forwarding (GST IN 09AAACU2488B1ZE) and (ii) logistics and distribution also known as contract logistics business in commercial parlance (GSTIN 09AAACU2488B2ZD). The record further shows that while issuing the show cause notice for cancellation of registration on 25.8.2023, neither any date has been fixed for submission of reply nor any date was fixed for personal hearing of the petitioner. The authorities have issued a notice without any allegation or proposed evidence against the petitioner showing as to how the violation of Section 25 (2) of the Act has been made by the petitioner which empowers the authorities to cancel the registration of the petitioner.

10. The record further shows that the authorities have further failed to satisfy the test required under Section 29 of the Act which empowers for cancellation of registration. The impugned order does not refer a word satisfying the test as required under Section 29 of the Act thus without there being any violation as prescribed under Section 29 of the Act, the registration of the petitioner has been cancelled.

11. The cancellation of registration is a serious act. In other words, by cancelling the registration, a person loses his opportunity to earn his bread and butter.

12. The record further reveals that while deciding the appeal of the petitioner, altogether new grounds have been taken. The record further shows that the petitioner was never confronted with the material being used

against the petitioner. The respondent authorities being the *quasi* judicial authority are expected and duty bound to discharge its duties strictly in accordance with the provisions of the Act as well as the Rules framed under the GST regime.

13. This Court in the case of **Jai Nath Rai Construction (supra)** has held as under:

11. This Court in the case of S.S. Traders (supra) has held as under:-

“A bare perusal of the show cause notice format prescribed under Rule 22(1) shows that there is a difference in the show cause notice dated 12.5.2021 issued to the petitioner and in the form of the show cause notice quoted aforesaid. The specific date and time is necessarily required to be mentioned in the notice for showing cause which is conspicuous by its absence in the notice to the petitioner. Moreover, the proviso to sub-section (2) of Section 29 mandates opportunity of hearing being provided to the person whose registration is proposed to be cancelled before cancelling the registration.

Paragraph 11 of the writ petition categorically mentions that after issuance of the show cause notice, no opportunity of hearing was granted to the petitioner by the respondent no.4 and that neither any date was fixed for hearing nor the petitioner was even called to "place the case" before the respondent no.4.

....

In the considered view of this Court, the denial of opportunity of hearing to the petitioner as is mandated in the first proviso to sub-section (2) of Section 29 of the Act of 2017 vitiates the proceedings as well as the orders cancelling the registration of the petitioner.”

14. Again Lucknow Bench of this Court in the case of **Siddha Mahajan Pvt. Ltd (supra)** has held as under:-

“10. The show cause notice issued to the petitioner was a cryptic notice. It merely alleged violation of Rule 21 (b) and 21 (a). It does not make any mention of any inspection made by the proper Officer

and the findings recorded on the basis of inspection. The order of cancellation of registration passed by the Assistant Commissioner, merely states that the authority was of the opinion that the petitioner's registration is liable to be cancelled for the reason contained in Rule 21 (a)-'person does not conduct any business from declared place of business'. The cancellation order does not take into consideration the explanation offered by the petitioner in reply to the show cause notice issued to him.

11. When the order cancelling registration of the petitioner entails adverse civil consequences upon the petitioner, the order must be supported by valid reasons forming basis of passing of the order. No order having adverse civil consequences can be passed without assigning reasons for the same.

12. The Appellate Authority has rejected the petitioner's appeal on the ground that the petitioner has not filed any memo of appeal and the grounds on which he is seeking restoration of registration are not clear. The Appellate Authority ought to have adopted the same yardstick while judging the validity of the impugned cancellation order passed by Assistant Commissioner, which also does not disclose any reason for cancellation of petitioner's registration. The mere mention of two sub-rules, without clarifying as to how those rules are being violated and what is the material to substantiate the allegation of violation of rules, would not give rise to a justified ground for cancellation of the petitioner's registration.”

15. High Court of Gujrat in the case of Aggarwal Dyeing and Printing Words (supra) has held as under:-

“18.2 Over a period of time, we have noticed in many matters that the impugned order cancelling the registration of a dealer travels beyond the scope of the show cause notice. Many times, the dealer is taken by surprise when he gets to read in the order that the authority has relied upon some inspection report or spot visit report etc. If the authority wants to rely upon any particular piece of evidence then it owes a duty to first bring it to the notice of the dealer so that if the dealer has anything to say in that regard, he may do so. Even if the authority wants to rely on any documentary evidence, the dealer should be first put to the notice of such documentary evidence and only thereafter, it may be looked into.”

16. Again Lucknow Bench of this Court in the case of DRS Wood Products Vs. State of UP (Writ C No. 21692 of 2021) decided on 5.8.2022 has held as under:-

“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.”

17. The record further shows that the appellate authority while rejecting the appeal of the petitioner, has taken altogether new ground to which the petitioner was neither put to any notice nor the petitioner was conferred with the material being used against him. It is a duty of the appellate authority, first to confer the dealer by putting him notice of such documents or materials, which were relied upon while cancelling the registration and after receiving the reply, the order should have been passed.

18. In the present case, the appellate authority has rejected the appeal on the ground that while applying for registration, HSN / SAC code has been disclosed, therefore, business undertaken by the petitioner under two different registrations are one and same cannot be bifurcated into two business verticals.

19. Further, the record shows that the conditions have been prescribed under Rule 21 for cancellation of registration, which have not been followed in the impugned order but only on the basis of reflection of HSN / SAC code in the registration application of the petitioner under the GST, the registration has been cancelled. In other words, the grounds mentioned under Rule 21 of the Act have not been tested by the respondent authorities, which empowers the cancellation of registration.

20. Further, it is not the case of the revenue that the petitioner has obtained the registration by committing any breach of the conditions mentioned under Section 29 (2) read with Rule 21 of the GST Act as well as the Rules.

21. In view of the aforesaid facts and circumstances of the case as well as law laid down as referred herein above, the impugned orders cannot be sustained in the eyes of law and same are hereby quashed.

22. The writ petition succeeds and is **allowed**.

23. The respondent authorities are directed to restore the registration of the petitioner forthwith on producing a certified copy of this order.

Order Date :- 24.3.2025

Rahul Dwivedi/-