Neutral Citation No. - 2024:AHC:193201-DB

Chief Justice's Court

Case :- WRIT TAX No. - 2140 of 2024

Petitioner :- M/s Sky Associates
Respondent :- State of U.P. and Another
Counsel for Petitioner :- Akhil Agnihotri
Counsel for Respondent :- Nimai Dass, ACSC

Hon'ble Arun Bhansali,Chief Justice
Hon'ble Vikas Budhwar,J.

1. This writ petition is directed against order dated 15.3.2024 passed by the respondents whereby GST registration of the petitioner has been cancelled.

2. It is inter-alia indicated that petitioner is registered under the Goods and Service Tax Act, 2017 ('Act, 2017') having GSTIN No.09EZRPS4978B1Z1. A show cause notice was issued to the petitioner dated 6.2.2024 for cancellation of the registration on the common portal. The reason indicated in the notice was that the petitioner has not filed return for a continuous period of six months. It is claimed that notice was sent on the common portal, which the petitioner did not see, being unaware of the same and for lack of response, the impugned order dated 15.3.2024 ordering for cancellation of the registration was passed by the authority.

3. The petitioner became aware of the said aspect when it received the said information while dealing with the Railways wherein, it was indicated that its GST registration has been cancelled. The petitioner approached the respondents seeking revocation of the cancellation. However, the same has been refused.

4. Submission has been made that the petitioner is registered under the Composition Scheme and is required to file one quarterly

return (GSTR 4) and one annual return (GSTR 9A), however, the show cause notice issued to the petitioner, pertained to non filing of return for a continuous period of six months, which is not applicable to the case of the petitioner. However, the order of cancellation indicated the status of the petitioner as person, other than paying tax under Section 10 having been failed to furnish returns for prescribed periods under Section 29(2)(c) of the Act, 2017, which provision also is not applicable to the case of the petitioner.

5. Submission has been made that the order passed besides being non speaking reflects non application of mind inasmuch as the purported failure of the petitioner to file return, in terms of Section 29(2)(c) of the Act, 2017 is not applicable.

6. It is submitted that the case of the petitioner, would be governed by provisions of Section 29(2)(b) of the Act, 2017, which pertains to a person paying tax under Section 10 of the Act, 2017.

7. It is further submitted that as the show cause notice and the order impugned passed by the respondents, have been issued under wrong impression by treating the petitioner as person other than covered under Section 10 of the Act, 2017, the same deserves to be quashed and set aside.

8. Learned counsel for the respondents made submissions that nowhere in the petition any averment pertaining to the status of the petitioner as registered under Section 10 of the Act, 2017 has been made. However, it is not denied that the order passed is non speaking.

9. In the circumstances of the case wherein, the claim made by the

petitioner is that it is covered under Section 10 of the Act, 2017 and as such, issuance of notice itself is incorrect, and the order impugned dated 15.3.2024 ordering for cancellation of registration is non speaking, the same is quashed and set aside.

10. The matter is remanded back to the jurisdictional authority, the petitioner would appear before the said authority and file response to the show cause notice dated 6.2.2024 raising all pleas as sought to be raised in the present petition, including the fact that it is registered under the provisions of Section 10 of the Act, 2017.

11. On petitioner's appearing before the authority, the authority shall hear the petitioner and pass a fresh order in accordance with law. The petitioner in the first instance shall appear before the authority on 24 December, 2024.

12. With the above directions, the petition stands disposed of.

Order Date :- 10.12.2024
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(Vikas Budhwar, J.) (Arun Bhansali, CJ)

Digitally signed by :-
NISITH DEY
High Court of Judicature at Allahabad