

Court No. - 18

Case :- WRIT TAX No. - 147 of 2022

Petitioner :- M/S Chandra Sain, Sharda Nagar, Lucknow Thru. Its Proprietor Mr. Chandra Sain

Respondent :- U.O.I. Thru. Secy. Ministry Of Finance, New Delhi And 5 Others

Counsel for Petitioner :- Sanjivea Shankhdhar, Durga Prasad Dubey

Counsel for Respondent :- A.S.G, C.S.C.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the petitioner; Shri Shiv P. Shukla, learned counsel for respondent nos.1 & 2 and learned Standing Counsel for respondent nos.3 to 6.

2. Present petition has been filed challenging the order dated 13.02.2020 whereby the registration of the petitioner was cancelled as well as the appellate order dated 06.09.2022 whereby the appeal was dismissed as being beyond the prescribed period of limitation.

3. The facts, in brief, are that the petitioner is a proprietorship concern engaged in civil contractual works and was registered under the GST Act. It appears that as the GST returns were not filed by the counsel, a show-cause notice dated 04.02.2020 was served. In the said show-cause notice, the reasons as prescribed were as under:

"Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

- 1. Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months*

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

You are hereby directed to appear before the undersigned on 12/02/2020 at 11:24."

4. The case of the petitioner is that the E-mail address in the registration was that of the Accountant of the petitioner, as such, the petitioner did not have knowledge of the show-cause notice, thus, the reply could not be filed and an order came to be passed on 13.02.2020 (Annexure – 2) whereby registration was cancelled. The gist of the cancellation order is reproduced herein below:

"Reference Number: ZA0902200654020

Date: 13/02/2020

To

CHANDRA SAIN

8438, RAJNI KHAND SHARDA NAGAR, Uttar Pradesh, 226025
GSTIN/UIN :09CCBPS2158G2ZG

Application Reference No. (ARN): AA090220006361Y

Dated: 04/02/2020

Order for Cancellation of Registration

This has reference to your reply dated 13/02/2020 in response to the notice to show cause dated 04/02/2020 Whereas no reply to notice to show cause has been submitted;

The effective date of cancellation of your registration is 13/02/2020

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and basis thereof is as follows:

The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you. You are required to pay the following amounts on or before 23/02/2020 failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

<i>Head</i>	<i>Central Tax</i>	<i>State Tax/UT Tax</i>	<i>Integrated Tax</i>	<i>Cess</i>
<i>Tax</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Interest</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Penalty</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Others</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Total</i>	<i>0.0</i>	<i>0.0</i>	<i>0.0</i>	<i>0.0</i>

Place: Uttar Pradesh

Date: 13/02/2020

VARUN KUMAR TRIPATHI

Assistant Commissioner

Lucknow Sector - 9”

5. The petitioner could not prefer an appeal, which is prescribed under the Act, on account of Covid – 19 situation and the fact that the petitioner fell ill for which medical certificates were granted, as such, the petitioner preferred a delay condonation application alongwith the appeal. The Appellate Authority was of the view that in view of the Bar created under Section 107(4) of the GST Act, the delay cannot be condoned, as such, he proceeded to dismiss the appeal holding that no power of condonation of delay exists in the statutory scheme of Section 107 of GST Act.

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.***

9. It is, however, directed that the petitioner shall file reply to the show-cause notice within a period of three weeks from today. The Adjudicating Authority i.e. Assistant Commissioner, Lucknow shall proceed to pass fresh order after giving an opportunity of hearing to the petitioner and after considering whatever defence he may take.

10. As the order dated 13.02.2020 is set aside, the further action shall prevail in accordance with law as prescribed under Section 29 of the GST Act.

Order Date :- 22.9.2022
nishant

[Pankaj Bhatia, J.]