

A.F.R.

Court No. - 3

Case :- WRIT TAX No. - 420 of 2022

Petitioner :- M/S Up Pipe Fitting Supplier

Respondent :- Goods And Services Tax And 3 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan,Gopal Verma

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

1. Heard Sri Rahul Agarwal, learned counsel for the petitioner and Sri Sashi Prakash Singh, learned Additional Solicitor General assisted by Sri Gopal Verma and Sri Gaurav Mahajan, learned counsel for the respondents.

2. This writ petition has been filed praying for the following reliefs :-

(i) Issue a writ, order or direction in the nature of Mandamus directing the respondents to act in accordance with the order dated 22.10.2021 (Annexure-5 to the writ petition) revoking the cancellation of the GST registration of the petitioner and restore the GST registration of the petitioner on the GST portal.

(ii) issue a writ, order or direction in the nature of Mandamus directing the respondents not to levy any late fees/penalty for late filing of returns by the petitioner for the months of August 2021 to March 2022.

3. Supplementary counter affidavit filed on behalf of respondent nos. 2, 3 & 4 is taken on record.

4. On 12.04.2022, this Court passed the following order :-

“1. Heard Sri Rahul Agarwal, learned counsel for the petitioner and Sri Gaurav Mahajan, learned Senior Standing Counsel for the Income Tax Department.

2. On the request of learned counsel for the petitioner, Goods and Service Tax Council, New Delhi through its Member Secretary is allowed to be impleaded as respondent no.5.

3. Notice on behalf of the respondent no.1 was accepted by learned Additional Solicitor General of India.

4. Notice on behalf of the newly impleaded respondent no.5 has been accepted by Sri Gopal Verma, learned Senior Standing Counsel for the Central Government who shall communicate this order to learned Additional Solicitor General of India.

5. On 28.03.2022 this Court passed the following order:-
"Heard Sri Rahul Agarwal, learned counsel for the petitioner and Sri Gaurav Mahajan, learned counsel for the respondent nos. 2,3, and 4. None appears for the respondent no.1.

The only issue involved in the present writ petition is restoration of the GST registration of the petitioner on portal. Prima facie, it appears that the respondents are acting arbitrarily and in defiance of their statutory duties.

Learned counsel for the respondent nos. 2,3, and 4 states that the server is at Chennai under the control of the respondent no.1 and despite writing letters, nothing has been done so far by the respondent no.1. The submission so made also prima facie, reflects dereliction in duties by the respondents and harassment of the petitioner by them.

Let a counter affidavit be filed by the respondent nos.1,2,3 and 4 within two weeks', failing which this Court may consider to impose cost, inasmuch as, due to the alleged non restoration of the GST registration on portal, the petitioner is neither able to carry on his business nor able to make statutory compliances.

Put up as a fresh case before the appropriate bench on 12.04.2022"

6. In compliance to the aforesaid order, the respondent nos. 2,3 and 4 filed today counter affidavit dated 11.04.2022 and in paragraph nos. 2, 8 and 9 they have stated as under:-

(2) That the deponent at the very outset craves leave of the Hon'ble Court to bring on record certain important facts, background and material which are already part of record and also flow from the statute book and which will have a material bearing on the outcome of the writ petition. The said facts are as follows:-

(a) The petitioner was a partnership firm consisting of 2 partners namely Satendra Kumar Jain and Narendra Kumar Jain.

(b) On 24.03.2021 Narendra Kumar Jain expired/passed away and the Partnership came to an end and as such the remaining partner submitted an online request through portal for cancellation of their registration vide ARNAA090721101216N dated 22.07.2021 The request for cancellation of their GSTIN 09AAAFU3379A1ZA was approved by the competent authority through the portal vide Reference No. ZA090721586918R dated 23.07.2021. Thus the registration of the

petitioner stood cancelled.

(c) On 29.07.2021 a new Deed of Partnership was made/executed between 2 partners namely Satendra Kumar Jain and Siddesh Jain.

(d) Subsequently the new partners filed an appeal before the Commissioner (Appeals) for restoration of its cancelled registration. The appeal was allowed vide order dated 22.10.2021.

(e) Thereafter the petitioner filed an application before the Respondent no.4 along with certified copy of the order dated 22.10.2021 passed by the Commissioner (Appeals) for revocation of its cancelled GST registration/restoration of its GST registration.

(f) Just as the process for cancellation of Registration is through online mode, same is the process of revocation of cancellation of registration is also fully online through portal. In this process, the applicant files revocation online and the same is disposed off online accordingly.

Therefore there is no option to initiate the revocation of cancelled registration by the Respondent Nos. 2,3 and 4. In terms of advisory dated 16.06.2021 on the subject "Difficulty in restoration of cancelled registration-Advisory" issued by the DG (Systems), Chennai, the request of the petitioner dated 28.10.2021 was forwarded to DG (Systems) Chennai along with duly filled prescribed format signed by the Commissioner, Central Goods and Service Tax and Central Excise, Agra for the needful at their end through email dated 23.11.2021. A photo copy of the email dated 23.11.2021 is enclosed herewith and marked as Annexure No. CA-1).

(8) That in reply to the contents of paragraph nos. 12 of the writ petition in the manner as stated therein it is respectfully submitted that acting upon petitioner's letter dated 08.12.2021 for revocation of their cancellation of registration. The request was again forwarded to the D.G. (Systems), Chennai through email dated 07.01.2022 in continuation of email dated 23.11.2021. A photo copy of the email dated 07.01.2022 is enclosed herewith and marked as Annexure No. CA-2.

(9) That in reply to the contents of paragraph no.13 of the writ petition in the manner as stated therein it is respectfully submitted that acting upon petitioner's letter dated 21.01.2022, this request has also been forwarded vide email dated 28.01.2022 to the DG (Systems), Chennai in continuation of email dated 23.11.2021 and 07.01.2022. A photocopy of the email dated 28.01.2022 is enclosed herewith and marked as Annexure No. CA-3.

7. From the afore-quoted averments made in the counter affidavit by the respondent nos. 2,3 and 4, it is evident that there is total lack of coordination between the authorities and for that reason the Director General (Systems), Chennai is not taking any action and is not giving effect to the order of the appellate authority dated 22.10.2021, despite letters written by the authority as referred in the afore-quoted paragraphs. The policy of the Government is "ease of doing business" but the policy is not properly being executed by own officer of the Government and thus, people are being obstructed to carry on business which is in breach of fundamental rights guaranteed under Article 19(1) of the Constitution of India.

8. Respondent nos. 1 and 5 may file short counter affidavit within a week, by means of their personal affidavit clearly giving response on the prevailing situation and shall also come out an appropriate circular and guidelines as well as appropriate action in the matter so that such thing may not be repeated and the dealers may not be harassed.

9. Put up as a fresh case before the appropriate bench on 21.04.2022 at 10.00 A.M. for further hearing.”

5. Today, a short counter affidavit on behalf of respondent nos. 1 & 5 has been filed by Sri Lalan Kumar, Commissioner CGST and CX Agra.

6. In the aforesaid short counter affidavit it has been states as under :-

*“10. That the deponent most respectfully submits that during the pendency of the present Writ Petition the registration of the petitioner has been restored on 19.04.2022 and restoration of the registration was also communicated to the petitioner by GSTN Legal, New Delhi through email dated 20.04.2022 containing 1 attachment. A photocopy of the email dated 20.04.2022 and its attachment are enclosed herewith and marked as **Annexure No.SCA-4**.*

11. That at this juncture it is necessary to place on record a Registration Advisory No. 07 of 2022 dated 23.03.2022 the subject of which is ‘Introduction of Restoration of Cancelled Registration based on Appellate Order - Reg’ issued by the Pr. Additional Director General of Systems and Data Management, Chennai. The Registration Advisory was issued on the basis of inputs/communications received from field formations. A photocopy of the Registration Advisory No. 07 of 2022 dated 23.03.2022 is enclosed herewith and marked as Annexure No. SCA-5.

12. That the deponent most respectfully submits that the Registration Advisory No. 7 of 2022 dated 23.03.2022 has put in place a suitable mechanism in the form of a functionality in the name of "Restoration of Cancelled Registration" and has been developed and deployed w.e.f. 23.03.2022 to facilitate the jurisdictional Range Officers to restore the registration in pursuance of judicial/appellate orders and necessary permission to operate this functionality has been enabled for the jurisdictional Range Officers.”

7. **Annexure SCA - 4** reflects the effective date of registration as 01.07.2017. Thus, the relief no. (i) as sought by the petitioner stands granted and the grievance of the petitioner in this regard now stands redressed.

8. So far as the relief No.(ii) is concerned, we hope that in view of the restoration of registration with retrospective effect on 20.04.2022, the authorities shall see that petitioner may not face any hurdle in filing his returns for the months of August 2021 to March 2022.

9. From the records, it appears that as per own case of the respondents a temporary mechanism to restore cancelled registration was created in the back end and an advisory vide e-mail dated 16.06.2021 was issued in this regard to restore registrations cancelled on the request of the dealers or pursuant to the orders passed by appellate authorities/High Court, but a permanent mechanism could not be developed until the aforesaid advisory dated 23.03.2022 (Annexure No.SCA No.5).

10. But now it developed and deployed a functionality in the name of “Restoration of Cancelled Registration” with effect from 23.03.2022 to facilitate the jurisdictional Range Officers to restore the registration in pursuance of judicial/appellate orders. The aforesaid Registration Advisory No.07/2022, dated 23.03.2022 is reproduced below :

“Date: 23.03.2022

Registration Advisory No. 07/2022

Sub: Introduction of Restoration of Cancelled Registration based on Appellate order – reg.

Communications have been received from field formations about passing judicial / appeal orders against cancellation orders, passed suo motu by the Range officers u/s 29 of the CGST Act, 2017. It has also come to notice that taxpayers in certain cases, had obtained orders from High Courts / appellate authorities to restore registrations cancelled on their own request. Since the functionality to implement the orders online was not ready, a temporary mechanism to restore cancelled registrations was created in the back-end and an advisory vide e-mail dated 16th June '2021 (copy enclosed), was issued in this regard.

2. Now, a functionality in the name of ‘Restoration of Cancelled Registration’ has been developed and deployed w.e.f. 23.03.2022, to

facilitate the jurisdictional Range officers to restore the registrations in pursuance of judicial / appellate orders.

3.This functionality would cover both the cancellations viz.. ordered suo motu by Range officers against which appeal orders were obtained without applying for revocation through form REG-21, and cancelled on the request from the taxpayers. A step by step guide along with indicative screens is annexed herewith (Annexure 'A') for guidance of the officers using the functionality.

4. Necessary permission to operate this functionality is being enabled for the Jurisdictional Range Officers.

*5. As per the contractual obligations, the vendor (Wipro) is required to rectify the defects/ errors/ bugs noticed, if any, in the functionality within 30 days of its deployment to production. It is, therefore, requested that **this advisory may be circulated among all the concerned officers for their guidance**, and issues, if any, in performance of the functionality may immediately be reported to cbicmitra.helpdesk@icegate.gov.in for necessary resolution. Copy of the communication with ticket details may also be forwarded to this office at dgschennai@icegate.gov.in for further follow up.*

(K.V.S. Singh)

Pr. Additional Director General”

11. We hope and trust that the GST Council and authorities under the Central Goods and Service Tax Act/States Goods and Service Tax Act 2017 shall be sensitive enough to address genuine problems of the dealers including the problems being faced in giving effect to the orders of appellate authority, Tribunal and courts. We also direct that the aforesaid Registration Advisory No.07/2022, dated 23.3.2022 shall be circulated forthwith by the GST Council amongst officers under the Act, 2017 as well as amongst association of traders and industries and amongst Tax Bar Associations at the district level in the state of Uttar Pradesh.

12. With the aforesaid observations, the writ petition is **disposed of** .

Order Date :- 26.4.2022/vkg