

Court No. - 37

Case :- WRIT TAX No. - 1022 of 2023

Petitioner :- M/S V R Enterprises

Respondent :- Additional Commissioner Grade 2 And Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot,J.

1. Heard Shri Aditya Pandey, learned counsel for the petitioner and Shri Ravi Shankar Pandey, learned Additional Chief Standing Counsel for the respondents-State.

2. The GST registration of the petitioner was cancelled by order dated 14.03.2023. The appeal of the petitioner was dismissed by the appellate authority dated 18.08.2023.

3. The petitioner is aggrieved by the order dated 14.03.2023 and the order dated 18.08.2023 and has assailed the same in this writ petition.

4. The impugned order dated 14.03.2023 makes a cryptic finding to the effect that no reply to the show cause notice was submitted by the petitioner. The order thereafter cancels the GST registration of the petitioner without assigning any reason.

5. The order of cancellation of GST registration dated 14.03.2023 visits the petitioner with severe penal consequences. Even if the finding that no reply to the show cause notice was submitted is taken on its face

value, the authority has to adhere its obligations in law to apply its mind to the facts of this case and render a speaking order. Failure to submit the reply to the show cause notice does not free the authority from its duty to apply its mind independently to the facts in the record and make a reasoned order while deciding the controversy. The authority of the first instance did not pass a reasoned order. This Court has set its face against the order of cancellation of GST registration by non-speaking orders.

6. Reference can profitably be made to the authorities in point. The judgment of this Court rendered on 22.09.2022 in **M/s Chandra Sain, Sharda Nagar, Lucknow Thru. Its Proprietor Mr. Chandra Sain v. U.O.I. Thru. Secy. Ministry of Finance, New Delhi and 5 others** wherein Pankaj Bhatia, J. held as under:

"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."

7. The said judgement is squarely applicable to the facts of this case. The order of cancellation being devoid of reasons is in the teeth of the law laid down by this Court in **M/s Chandra Sain (supra)**.

8. The narrative has also the benefit of the holding of the Madras High Court in **M/s. Pearl and Co. v. The Commissioner of Commercial Taxes and another (W.P. (MD) No.19127 of 2022 and W.M.P. (MD) No.13962 of 2022)**, wherein the consequences of cancellation of registration of a dealer and the approach of the revenue while considering such matters was set out as follows:

"6.Considering the submission and perusal of the materials, this Court is of the view that restoring the registration would not cause any harm to the department on the other hand it would be beneficial for the state to earn revenue. Further, in the case of **Tvl.Suguna Cutpiece Vs Appellate Deputy Commissioner (ST) (GST) and others (W.P.Nos. 25048, 25877, 12738 of 2021 etc.. batch)**, dated 31.01.2022. There some of the petitioner filed an appeal beyond the period of limitation either for filing application for revocation of cancellation, while some of them had directly filed a writ petition against the order cancelling the registration. While some of them filed appeal beyond the statutory period of limitation, there was further delay in filing the writ petition. However, considering the over all facts and circumstances of the case, it was held that no useful purpose will be served by keeping those petitioners out of the Goods and Services Tax regime, as such assessee would still continue to do business and supply

goods/services. By not bringing them back to the Goods and Services Tax fold/regime, would not further the interest of the revenue. Relief was granted under similar circumstances with the following directions:

"216. Since, no useful will be served by not allowing persons like the petitioners to revive their registration and integrate them back into the main stream, I am of the view that the impugned orders are liable to be quashed and with few safeguards.

217. There are adequate safeguards under the GST enactments which can also be pressed against these petitioners even if their registration are revived so that, there is no abuse by these petitioners and there is enough deterrence against default in either paying tax or in complying with the procedures of filing returns.

218. Further, the Government requires tax to meet its expenditure. By not bringing these petitioners within the GST fold, unintended privilege may be conferred on these petitioners unfairly to not to pay GST should they end supplying goods and/or services without registration. For example, a person renting out an immoveable property will continue to supply such service irrespective of registration or not.

219. Therefore, if such a person is not allowed to revive the registration, the GST will not be paid, unless of course, the recipient is liable to pay tax on reverse charge basis. Otherwise, also there will be no payment of value added tax. The ultimate goal under the GST regime will stand defeated. Therefore, these petitioners deserve a right to come back into the GST fold and carry on their trade and business in a legitimate manner.

220. The provisions of the GST Enactments and the Rules made there under read with various clarifications issued by the Central

Government pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear, intention is to only facilitate and not to debar and de-recognised assesses from coming back into the GST fold."

9. The order rejecting the appeal fails to redeem the errors committed by the assessing authority. The appellant authority dismissed the appeal as being time barred. The appellate authority by rejecting the appeal by the order dated 18.08.2023 was misdirected in law. The appellate authority failed to reference the mode of service and also did not record its satisfaction of service of the order upon the petitioner. The appellate authority has made no finding regarding the date of knowledge of the order. The impugned order is in the teeth of the law laid down by this Court in **M/s Dial For Cool v. State of U.P. and 2 others (Writ Tax No.1338 of 2022)**.

10. The period of limitation shall be reckoned only from the date of knowledge or service of the order upon the petitioner and not from the date the order was passed.

11. The order of the assessing authority dated 14.03.2023 and the order of the appellate authority dated 18.08.2023 are unsustainable in law. The orders dated 14.03.2023 and 18.08.2023 are liable to be set aside and are set aside.

12. The matter is remitted to assessing authority for fresh consideration.

13. The assessing authority shall issue a show cause notice

and decide the controversy in light of the observations made in this judgement and upon giving an opportunity of hearing to the petitioner.

14. The entire exercise shall be completed within a period of two months from the date of receipt of a certified copy of this order.

15. The writ petition (tax) is allowed.

Order Date :- 6.12.2023

Ashish Tripathi