

ALLAHABAD HIGH COURT

M/S ANSARI CONSTRUCTION V/S - ADDITIONAL COMMISSIONER CENTRAL GOODS AND SERVICES TAX (APPEALS) AND 2 OTHERS

HON'BLE PANKAJ BHATIA,J

WRIT TAX No. - 626 of 2020

24.11.2020

Heard learned counsel for the petitioner and Sri Ramesh Chandra Shukla, learned counsel for the respondents.

The present petition has been filed alleging that the petitioner is a proprietorship firm and was registered for providing constructions services vide GSTIN No. 09AAGPQ9159G125.

The petitioner was served show cause notice dated 21.11.2019 by the respondent no. 2 proposing to cancel the registration certificate of the petitioner mainly on the ground that the petitioner has failed to file the return for a continuous period of six months. In pursuance of the said notice, an ex-parte order was passed on 30.11.2019 cancelling the registration of the petitioner by invoking the powers under Section 29(2)(5) of Uttar Pradesh Goods and Services Tax, 2017 (hereinafter referred to as the 'GST Act 2017'). The petitioner filed an application on 19.12.2019 under Section 13 of U.P. GST Act 2017 for revocation of cancellation of registration on the ground that the petitioner had submitted all the pending returns under GSTR-3B and GSTR-1 and, thus, the entire tax liability stood clear with the late fees.

In response to the application filed by the petitioner on 19.12.2019, the respondent no. 2 issued a show cause notice on 29.12.2019 calling upon the petitioner to show cause on the following reasons failing which the application of the petitioner shall be decided on ex-parte on the basis of the available records on merits. A copy of the said show cause notice is being quoted herein below:

“Reference Number : ZA0912191466860

Date : 29/12/2019

To

ABDUL QUALAM

31, TOWN SHAHPUR, NOORBAFAN,

Muzaffarnagar, Uttar Pradesh, 251318

GSTIN: 09AAGPQ9159GIZ5 Application Reference No. (ARN): AA091219061897K Dated: 19/12/2019

Show Cause Notice for rejection of application for revocation of cancellation of registration

This has reference to your application dated 19/12/2019 regarding revocation of cancellation of registration. Your application has been examined and the same is liable to be rejected for the following reasons:

Reason for revocation of cancellation – Others (Please specify)-

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 03/01/2020 at 16:00 If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Bipin Kumar

Assistant Commissioner

Muzaffarnagar, Sector-1”

The show cause notice was completely vague and did not even point out as to what ground the reply was proposed to be sought, the petitioner appeared and apprised that all the returns have already been filed, however, despite the petitioner having replied, the respondent no. 2, vide order dated 30.1.2020, rejected the application for revocation of registration recording as under:

“the tax payer has simply stated that interest has been paid without providing any details as to amount or details of Challan/DRC-03.”

Aggrieved against the said order, the petitioner preferred an appeal before the appellate authority, the respondent no. 1 which was registered as Appeal No. 86/2019-20. In the memo of appeal, which is on record, it was specifically pleaded that the application for revocation of cancellation of registration has been wrongly rejected despite of the Challan present on the portal, along with the said appeal, the petitioner once again filed all the requisite documents evidencing the filing of returns as well as the tax and late fees.

The Appellate Authority, vide its order dated 06.07.2020, dismissed the appeal and affirmed the order dated 30.1.2020 and relied upon mail issued by a division office dated 21.5.2020 to the effect that tax payer did not upload any documents online while replying to the query and as the petitioner had simply stated that all the liabilities have been cleared by them even they have not disclosed as to on what date they filed return and did not enclose the copy filed by them and the tax payer simply made claims without producing proper evidence which cannot be verified by the division office at this stage.

The submission of counsel for the petitioner is that all the records with regard to the deposits made were available on the portal and could be easily verified by the Department, the Appellate Authority, however, in the order although recorded that at the time of personal hearing, the appellant had informed that the Government dues had been deposited and statutory returns have been filed, however, the appeal was rejected mainly on the ground that the jurisdictional authorities are not conforming the facts, he had placed reliance on the mail received from the divisional office on 21.5.2020. The Appellate Authority further recorded that the proper Officer was not satisfied under Rule 23 and in the absence of statutory returns, the facts cannot be verified at that level and, thus, proceeded to dismiss the appeal.

This Court, vide order dated 09.11.2020, had granted time to the counsel for the respondents to obtain instructions.

Sri R.C. Shukla, learned counsel for the respondents, on the basis of instructions received, states that the tax payer has filed GSTR3B upto November 2019 and further there are no dues pending towards tax, late fee, interest upto November 2019 and the said instructions clearly record that there are no dues of tax payer pending upto November 2019. A copy of the instructions so received are taken on record.

This case highlights the callous manner in which the assessee has been harassed by the respondents.

It is relevant to note that under the statutory scheme the registration can be cancelled only as provided under Section 29 of U.P. GST 2017 on the grounds as enumerated in sub-section 1 or sub-section 2. Section 29(1) and Section 29(2) of U.P. GST, 2017 are quoted here-in-below:

“29. Cancellation of registration-

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,—

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, willful misstatement or suppression of facts: Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

A perusal of Section 29 (2)(c) of the said Act 2017, with which the present case is concerned clearly provides for cancellation of registration if the assessee fails to furnish the returns for a continuous period of six months and invoking the said clause the registration of the petitioner was cancelled as on 30.11.2019.

Section 30 with the said Act provides a remedy to the person whose registration has been cancelled and in terms of the remedy so provided the petitioner approached the authority for revocation of the registration within the times specified therein.

The exercise of powers under Section 30 are governed by Rule 23 of the U.P. GST Rules, 2017 which is as under:

“23. Revocation of cancellation of registration.-

(1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner: Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.

(2) (a) Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant. (b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in FORM GST REG-05, reject the application for revocation of cancellation of registration and communicate the same to the applicant. (3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in FORM GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in FORM GST REG-24. (4) Upon receipt of the information or clarification in FORM GST REG-24, the proper

officer shall proceed to dispose of the application in the manner specified in sub-rule (2) within a period of thirty days from the date of the receipt of such information or clarification from the applicant.”

In terms of the proviso to Rule 23(1) a burden is cast upon the assessee to furnish returns and to ensure that the tax due is paid along with any due interest penalty and late fees no further burden is cast upon the assessee or the persons seeking revocation.

In the present case along with the application, the petitioner had filed a statement to the effect that all the requisite returns have been filed and the dues are cleared and thus it was incumbent upon the Department to have verified the correctness of averments made in the application. I am sorry to observe that the Department miserably failed to verify the facts from their own records and proceeded to issue a show cause notice which is contained in Annexure 4 to the writ petition and quoted herein above. The manner in which the show cause notice has been issued is wholly unacceptable as it does not record any shortcoming on the part of the assessee. It is not conceivable as to what was required in the show cause notice.

A perusal of the said show cause notice clearly highlights the fact that serious quasi-adjudicatory functionaries are being discharged by persons who do not have a legally trained mind and are entrusted in discharging functions affecting huge revenues. The order dated 30.1.2020 passed by the Assistant Commissioner rejecting the application of the petitioner is wholly arbitrary and demonstrates the lack of legally trained mind as there appears to be no effort to verify the correctness of the assertions made by the petitioner at the end of the Department.

I am sorry to record that the appellate authority has also committed the same manifest arbitrariness in deciding the appeal, the recording of the reason that facts cannot be verified at the appellate level is wholly arbitrary and militates against the whole purpose of statutory appeal under an enactment.

The Court cannot overlook the mutually contradictory stands taken by the Department before the Appellate Authority on one hand and the instructions given to this Court which is quoted here-in-below:

“Punitive reply is as under:

(i) The taxpayer has filed GSTR-3B upto November 2019.

(ii) Further, there are no dues pending towards tax, late, fee interest upto November 2019. The taxpayer vide his letter dated 19.11.2020 submitted copies of 04 DRC-03 vide which the taxpayer had paid remaining amount of interest on delayed payment of tax upto the month of November 2019. Hence, there are no dues pending against the taxpayer upto November 2019.”

It is surprising that as to why this instructions could not be obtained or given at the level of the adjudication or appellate level and the callous attitude of the Department has resulted in the assessee being harassed by approaching one forum after the other and wasting his considerable financial resources as well as time.

Considering the fact that now the Department has accepted that the returns were filed within time and no dues remain payable, the order dated 30.11.2019 as well as the appellate order dated 06.07.2020 deserves to be set aside with a direction to allow the application for revocation of registration filed by the petitioner.

Consequently, the order cancelling the registration stands revoked from the date of filing of the application before the respondent no. 2.

In view of the specific findings recorded above to the effect that the petitioner was unnecessarily harassed, the writ petition is allowed with a cost of Rs. 10,000/- to be paid to the petitioner within 30 days by the respondent no. 2 from his own salary.

The writ petition is allowed in terms of the said order.

Order Date :- 24.11.2020