

Court No. - 39

Case :- WRIT TAX No. - 1342 of 2022

Petitioner :- M/S D.M. Traders

Respondent :- Union Of India And Another

Counsel for Petitioner :- Abhishek Kumar Tripathi

Counsel for Respondent :- A.S.G.I., Krishna
Agarwal, Ugrasen Kumar Pandey

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Vipin Chandra Dixit, J.

Heard learned counsel for the petitioner. Sri Krishna Agarwal, learned Advocate has put in appearance on behalf of respondent no. 2.

The present petition is directed against the show cause notice dated 18.08.2022, whereby, the petitioner has been called upon to explain as to why proceeding for cancellation of registration be not initiated against him. The show cause notice also records that the registration of the petitioner has been suspended w.e.f.18.08.2022.

It is sought to be submitted by learned counsel for the petitioner that no reason has been provided in the show cause notice as to why the proceeding for cancellation of registration under the CGST Act is sought to be initiated against the petitioner. The show cause notice lacks in all material details so as to enable the petitioner to submit proper reply to the same.

Reliance has been placed on the decision of the Apex Court in the case of ***Commissioner of Central Excise, Bangalore vs. Brindavan Beverages (P.) Ltd., (2007) 5 SCC 368*** to assert that such a show cause notice cannot be sustained in the eye of law as the petitioner is not in a position of furnish any reply to the same in absence of any material or reason given therein for initiation of such cancellation proceeding. It is argued that the show cause notice must comprise of four things; (i) foundational facts (ii) Material to reach such foundational facts (iii) allegation/violation of law in light of the foundational facts and (iv) showing cause against such allegation and the consequence thereof. In absence of disclosure of allegations in the notice, it becomes a mere formality and the petitioner cannot furnish any reply.

Sri Krishna, Agarwal, learned Advocate appearing on behalf of respondent invited our attention at page no. '20' of the paper book, which is the order of initiation of the proceeding under Section 129(1)(b) of CGST Act, whereby the penalty under

CGST Act and SGST Act has been imposed upon the petitioner. It is submitted that the show cause notice subject matter of challenge, is a fall out of the proceeding initiated against the petitioner under the CGST Act.

A perusal of show cause notice itself indicates that the reason stated therein are :-

"Issuance of invoice or bill without supply of goods and / or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit refund of tax."

In paragraph no. '6' of the writ petition, it is stated that against the order passed under Section 129(1) of the CGST Act, the petitioner has instituted an appeal under Section 107 of the CGST/UPGST Act against the demand and is contesting the penalty order before the First Appellate Authority.

Taking note of the above facts, we find that the show cause notice suspending the GST registration of the petitioner w.e.f. 18.08.2022 is due to the proceedings initiated against the petitioner under the GST Act for violation of the provisions in issuing invoice or bill without supply of goods & wrongful availment of the benefits under the Act. We are of the considered view that the petitioner should furnish a proper reply to the show cause notice dated 18.08.2022 making out a case as to why action cannot be taken against him. As the petitioner has approached this Court without furnishing any reply to the show cause notice, we do not find it a fit case for interference.

However, in case, the petitioner submits his reply to the show cause notice raising the points of objection to the same along with the certified copy of this order within a period of two weeks from today, the competent authority shall consider and decide the same in accordance with law.

With the aforesaid observation, the writ petition is disposed of.

Order Date :- 21.10.2022

sailsh