

SH. ISHWAR CHAND PROPRIETOR OF M/S. BHAGWATI TRADING CO. VERSUS UNION OF INDIA & ORS.

W.P.(C) 10363/2022

Dated: - 24-3-2023

Judgment / Order

HON'BLE MR. JUSTICE VIBHU BAKHRU AND HON'BLE MR. JUSTICE AMIT MAHAJAN

For the Petitioner Through: Mr. Malay Swapnil & Ms. Bhumika Aggarwal, Advs.

For the Respondents Through: Mr. Krishna Kumar Sharma, Sr. Panel Counsel with Mr. Anil Devlal, Govt. Pleader for R1 Mr. Vijay Joshi, Sr. SC with Mr. Gurjas Singh Narula, Adv.

ORDER

1. The petitioner has filed the present petition, inter alia, praying as under:

"1. Issuance of a Writ of Mandamus or any other appropriate writ whereby directing the respondent/s to set aside the penalty of Rs.2,32,014/- imposed upon "GSTIN 07ABSPC2338JIZJ" of the petitioner herein Sh. Ishwar Chand, Proprietor of M/S Bhagwati Trading Company, 656-A, Chandni Chowk, Katra Hira Lal, Delhi-110006.

2. Any other Order/s or Directions which your Lordships may kindly deem fit and proper in the circumstances of this present case may also be passed in favour of the petitioner and in the interest of Justice."

2. Learned Counsel for the respondent states that no demand for penalty had been raised and the amount of ₹2,32,014/- has been computed by the petitioner on its own.

3. The controversy in the present petition relates to levy of penalty for late filing of the GST returns, for the period the petitioner was disabled from doing so, on account of cancellation of its GSTIN registration.

4. The petitioner had not filed its GST returns for a period of more than six months, resulting in the respondents issuing a Show Cause Notice dated 13.12.2019.

5. The said Show Cause Notice is not on record. However, it does appear from the subsequent orders that the reason for issuing the Show Cause Notice was precisely what is stated above – the petitioner has not filed its returns for a period of six months.

6. It is the petitioner's case that on receipt of the Show Cause Notice, it had filed its GST returns and cured the reason for which the cancellation of its GSTIN registration was proposed.

7. Notwithstanding the same, the respondent passed an order dated 29.07.2020, cancelling the petitioner's registration with effect from that date, that is, 29.07.2020.

8. The petitioner filed an application on 16.10.2020, seeking revocation of the said order dated 29.07.2020.

9. The respondent authority issued a Show Cause Notice proposing to reject the petitioner's application for revocation of the cancellation of the GSTIN registration. The said Show Cause Notice dated 27.10.2020 did not disclose any reason for the rejection of the petitioner's application for revocation of the cancellation of the GSTIN registration. It simply stated that *"Reason for revocation of cancellation – Others (Please specify)"*.

10. Thereafter, the petitioner's application for revocation of the cancellation of the GSTIN registration was rejected by an order dated 14.12.2020 for the sole reason that the petitioner had not responded to the Show Cause Notice dated 27.10.2020.

11. The petitioner appealed against the said order before the appellate authority and succeeded.

12. The said appeal was allowed by an order dated 26.08.2021. The operative part of the said order reads as under:

"9. The Appeal filed by the Appellant for revocation of cancellation of registration is allowed. The Appellant is directed to file all pending returns and make payments towards GST liability within 30 days from the order of revocation of registration. The restoration of registration is made subject to the verification of payment particulars, filing of returns and compliance of the provisions of CGST Act and rules made thereunder. The impugned order dated 14.12.2020 passed by the Adjudicating Authority is set aside for the reasons as discussed supra."

13. Despite the fact that the appellate authority had directed that the petitioner's GSTIN registration be restored and had further granted the petitioner, 30 days' time to file the pending returns, the petitioner's registration was not restored immediately and was restored on 22.04.2022.

14. Thus, it is the petitioner's case that it could not file its returns prior to that date.

15. In the meantime, the petitioner preferred a writ petition before this Court, being W.P.(C) 6680/2022, inter alia, praying that the respondents be directed to restore the GSTIN registration and in addition to this, the petitioner claimed damages and compensation for the loss of business and reputation suffered by it on account of cancellation of GSTIN.

16. On the first hearing held on 27.04.2022, the petitioner gave up its claim for damages. By that time, the petitioner's GSTIN was restored and, therefore, its principal grievance stood addressed. Accordingly, the petition was disposed of.

17. The controversy in the present petition is related to the levy of penalty for the late filing of the returns.

18. It is clear from the above that the order dated 14.12.2020, rejecting the petitioner's application for revocation of cancellation of GSTIN registration is unsustainable. It provides no reason as to why the petitioner's application was rejected.

19. As stated above, the only reason is that the petitioner had not responded to the Show Cause Notice dated 27.10.2020. It is hard to accept that there could be any meaningful response to the said Show Cause Notice. It sets out no reason at all for proposing to reject the petitioner's application for revocation of cancellation.

20. It is also noticed that the petitioner's principal contention was that it had already complied with the requirement of filing the returns on the date when the order cancelling its registration was passed and, therefore, the said order was unsustainable.

21. We are, prima facie, of the view that from the date of the petitioner filing an application for revocation of its cancellation, that is, 16.10.2020, the petitioner cannot be held responsible for not filing its returns during the period when the registration stood cancelled.

22. Thus, for the purpose of calculating any penalty for the late filing of the returns, the period, 16.10.2020 to 22.04.2022, is liable to be excluded.

23. Learned Counsel appearing for the respondent shall take specific instructions with regard to the aforesaid and, if necessary, file an additional affidavit.

24. List on 14.04.2023.

25. Dasti under signature of the Court Master.

