GAHC010058982025

2025:GAU-AS:5428

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1701/2025

JURI BHUYAN

REPRESENTED BY ITS PROPRIETOR SMTI JURI BHUYAN, AGED ABOUT 51 YEARS, WIFE OF NANDESWAR LASKAR, SITUATED AT, A 295 OIL, DULIAJAN, DIBRUGARH, ASSAM- 786602.

VERSUS

UNION OF INDIA AND 3 ORS.

REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA, DEPARTMENT OF FINANCE.

2:THE PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX
GST BHAWAN
KEDAR ROAD
GUWAHATI- 781001
ASSAM.

3:THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GUWAHATI
ASSAM.

4:THE SUPERINTENDENT
CENTRAL GOODS AND SERVICES TAX
KHARSANG RANGE
CHANGLANG
ARUNACHAL PRADESH

Advocate for the Petitioner : MR S K AGARWAL, M AGARWAL

Advocate for the Respondent : DY.S.G.I., SC, GST

BEFORE

HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

Date : 01-05-2025

The petitioner has approached this Court by the instant writ petition, preferred under Article 226 of the Constitution of India, on the premise that her GST Registration under the Central Goods and Services Tax [CGST] Act, 2017 has been cancelled by an Order dated 09.09.2020 pursuant to issuance of a Show Cause Notice dated 27.08.2020. The assail is made *inter-alia* on the grounds that the manner in which the GST Registration has been cancelled is arbitrary and the impugned Order of cancellation has been passed by the Proper Officer without due application of mind.

2. It is the case of the petitioner that she is a Works Contractor and carries on her business from Duliajan, District – Dibrugarh, Assam. The petitioner got herself registered as a proprietorship firm under the Central Goods and Services Tax [CGST] Act, 2017 ['the CGST Act', for short]/State Goods and Services Tax [SGST] Act, 2017 ['the SGST Act', for short]. It is stated that when the petitioner applied for registration, the petitioner was issued a Registration Certificate in Form GST REG-06 with Registration no. 18BOXPB4909M1Z9 w.e.f. 01.07.2017 and the Registration Certificate was issued on 07.12.2017.

3. The petitioner was issued the Show Cause Notice on 27.08.2020 by the Proper Officer asking her to show cause as to why the Registration issued to her under the CGST Act should not be cancelled due to failure on her part to furnish returns for a continuous period of six months. The petitioner was

thereby, asked to furnish a Reply within seven days from the date of service of the Show Cause Notice. It was further mentioned that if the petitioner would fail wither to furnish a Reply within the stipulated date or to appear for personal hearing on the appointed date and time, the case would be decided ex-parte on the basis of the available records and on merits.

4. Thereafter on 27.08.2020, the impugned Order came to be passed whereby the petitioner's GST Registration has been cancelled w.e.f. 09.09.2020.

5. I have heard Mr. S.K. Agarwal, learned counsel for the petitioner and Dr. B.N. Gogoi, learned Standing Counsel, CGST for all the respondents.

6. Mr. Agarwal, learned counsel for the petitioner has fairly submitted that in response to the Show Cause Notice, which was uploaded in the common portal, the petitioner could not submit her Reply due to reasons beyond her control as it escaped her notice. It is submitted that due to advent of Covid-19 and its continuance, the petitioner's business suffered hugely. It is submitted that the petitioner came to learn about the Show Cause Notice when the time for filing the Reply was already over and the impugned Order dated 09.09.2020 had already been uploaded in the common portal. After improvement of the Covid-19 situation, the petitioner made efforts to revive the business gradually. The petitioner had submitted returns only upto September, 2020, as allowed by the GST Portal and is ready and willing to submit all the pending returns, if allowed by the authority. Though the petitioner tried to submit an application for revocation, the GST portal did not allow submission of such application as the time-limit prescribed for filing of revocation of application was already over by then. Similarly, the petitioner could not prefer an appeal due to expiry of the statutory period of limitation.

6.1. Mr. Agarwal has submitted that the impugned Order of cancellation of GST Registration is to be passed in Form GST REG-19 and the Proper Officer

while cancelling an assessee's GST Registration, has to assign reasons for cancellation of registration. But, the impugned Order dated 27.08.2020 is a non-speaking one. He has further submitted that the case of the present petitioner is substantially similar to the case of the petitioner in the writ petition, W.P.[C] no. 1771/2025, which was disposed of by an Order dated 05.04.2025.

7. Dr. Gogoi, learned Standing Counsel, CGST for the all respondents has submitted that the default of not filing the returns for a continuous period of six months and more was clearly attributable to the petitioner and none else. He has further submitted that the petitioner did not either submit an application for revocation in time nor presented an appeal under Section 107, CGST Act in time and such facts go to demonstrate that the petitioner herself was indolent and not vigilant.

8. I have considered the submissions of the learned counsel for the parties and have also gone through the materials brought on record, apart from the relevant provisions of the CGST Act and the CGST Rules, 2017 ['the CGST Rules', for short] on which the learned counsel for the parties have relied on.

9. Section 39[1] of the CGST Act *inter-alia* requires a registered person to furnish a return for every calendar month or part thereof, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed. Rule 61[1] of the CGST Rules has prescribed the Form and manner of furnishing of return electronically through the common portal either directly or through a notified Facilitation Centre, as specified under sub-section [1] of Section 39 of the CGST Act.

10. As per Section 29[2][c], an officer, duly empowered, may cancel the GST registration of a person from such date, including any retrospective date, as he deems fit, where any registered person, has not furnished returns for such

continuous tax period as may be prescribed. As per Rule 21[h] of the CGST Rules, registration granted to a person is liable to be cancelled, if the said person being a registered person required to file returns under sub-section [1] of Section 39 of the CGST Act for each month or part thereof, has not furnished returns for a continuous period of six months.

11. Rule 22 of the CGST Rules has laid down the procedure for cancellation of the registration. For ready reference, Rule 22 of the CGST Rules is quoted hereinbelow :-

Rule 22 : **Cancellation of Registration**

[1] Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under Section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.

[2] The reply to the show cause notice issued under sub-rule [1] shall be furnished in FORM REG-18 within the period specified in the said sub-rule.

[3] Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted under sub-rule [1] of Rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule [1], or under sub-rule [2A] of Rule 21A, cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty

including the amount liable to be paid under sub-section [5] of Section 29.

[4] Where the reply furnished under sub-rule [2] or in response to the notice issued under sub-rule [2A] of Rule 21A is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20 :

Provided that where the person instead of replying to the notice served under sub-rule [1] for contravention of the provisions contained in Clause [b] or Clause [c] of sub-section [2] of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20.

[5] The provisions of sub-rule [3] shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

12. Sub-rule [1] of Rule 22 of the CGST Rules has *inter-alia* prescribed that where the Proper Officer has reasons to believe that the registration of a person is liable to be cancelled under Section 29 of the CGST Act, he is required to issue a notice to such person in FORM GST REG-17, requiring the noticee to show cause, within a period of seven working days from the date of the service of such notice, as to why the noticee's registration shall not be cancelled. Then, the noticee-registered person can furnish, as per sub-rule [2], his Reply to the show cause notice in FORM GST REG-18 within the period specified, that is, within seven working days.

13. Sub-rule [3] of Rule 22 has *inter-alia* prescribed that where in respect of a registered person the registration is liable to be cancelled, the Proper Officer shall issue an order in FORM GST REG-19 with a period of thirty days from the date of the Reply to the Show Cause Notice issued under sub-rule [1], cancelling the registration with effect from a date to be determined by him and

notifying the taxable person to pay arrears of any tax, interest or penalty. It is implicit in sub-rule [3] that the Reply submitted by the person has to be unsatisfactory for the registration to be cancelled.

14. Sub-rule [4] of Rule 22 of the CGST Rules has stated that where the Reply furnished under sub-rule [2] is found to be satisfactory, the Proper Officer shall drop the proceedings and pass an order in FORM GST REG –20.

15. Reverting back to the Show Cause Notice dated 27.08.2020 issued in the case in hand, it is noticed that the petitioner was asked to show cause as to why her GST Registration shall not be cancelled for the reason : 'Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months'. The month since when and the period during which the petitioner did not file the monthly returns were not mentioned in the Show Cause Notice. The petitioner was also directed to furnish a Reply to Show Cause Notice within seven days from the date of service of the Show Cause Notice. The Show Cause Notice further provided that if the petitioner as the noticee would fail to furnish a Reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case would be decided *ex-parte* on the basis of available records and on merits. No date for personal hearing was mentioned in the Show Cause Notice.

16. When the contents of the Show Cause Notice dated 27.08.2020 and the contents of the impugned Order dated 09.09.2020 are read together, it is found that by the Order dated 09.09.2020, the proper officer while cancelling the GST Registration of the petitioner w.e.f. 09.09.2020, has not assigned any reason. The Proper Officer in the Order dated 09.09.2020 has recorded that : 'This has reference to your Reply dated 05.09.2020 in response to show cause dated 27.08.2020. Whereas the undersigned has examined your reply and submissions made at the time of hearing and is of the opinion that your registration is liable to be cancelled for following reason[s]. 1. Approved.'

17. When the contents of the Show Cause Notice dated 27.08.2020 and the contents of the impugned Order dated 09.09.2020 are read together, it is found that the Proper Officer has made mention of a Reply dated 05.09.2020 submitted from the petitioner's end in response to the Show Cause Notice dated 27.08.2020. The Proper Officer has gone on to observe that he examined the Reply received from the petitioner and considered the submissions made by the petitioner at the time of personal hearing. On the other hand, the petitioner had asserted that there was no Reply submitted from her end and the petitioner did not attend any personal hearing before the Proper Officer. As there was no pleading to that effect, the petitioner submitted an additional affidavit asserting such facts. Despite putting on notice on 02.04.2025, no instructions are placed not any counter affidavit is filed in rebuttal of the petitioner's assertion on the said two aspects.

18. It has been laid down in sub-rule [3] of Rule 22 of the CGST Rules that the Officer has to pass an Order under Section 29[2] of the CGST Act read with Rule 22[3] of the CGST Rules in FORM GST REG-19. For ready reference, the contents of Form GST REG-19 are extracted hereinbelow :-

FORM GST REG-19

Reference No……. Date .....

To
Name
Address
GSTIN/UIN
Application Reference Number [ARN]

Order for Cancellation of Registration

This has reference to show cause notice issued dated …….

☐ Whereas no reply to the show cause notice has been submitted;

and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason[s]: or

☐ Whereas reply to the show cause notice has been submitted vide <ARN Number> dated……;

and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason[s]: or

☐ Whereas no reply to the show cause notice has been submitted and on day fixed for personal hearing, you did not appear in person or through an authorised representative, and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason[s]: or

☐ Whereas no reply to the show cause notice has been submitted, but you/your authorised representative attended the personal hearing and made a written or verbal submission; and whereas, the undersigned on examination of your written or verbal submission made during personal hearing and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason[s]: or

☐ Whereas reply to the show cause notice has been submitted vide <ARN Number> dated…… But, you or your authorised representative did not attend the personal hearing on scheduled or extended date;

and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason[s]: or

☐ Whereas reply to the show cause notice has been submitted vide <ARN Number> dated…… and you/your authorised representative attended the personal hearing, made a written/oral submission during personal hearing;

and whereas, the undersigned has examined your reply to show cause notice as well as submissions made at the time of personal hearing and is of the opinion that your registration is liable to be cancelled for following reason[s]:

i.

ii.

The effective date of cancellation of your registration is <<DD/MM/YYYY>>.

2. Kindly refer to the supportive document[s] attached for case specific details.
3. It may be noted that a registered person furnishing return under sub-section [1] of section 39 of the CGST Act, 2017 is required to furnish a final return in FORM GSTR-10 within three months of the date of this order.
4. You are required to furnish all your pending returns.
5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined or after the date of cancellation.

Place :

Date :

Signature

<Name of the officer>

Designation

Jurisdiction.

19. Under the GST regime a registered assessee is required to pay the statutory dues under the CGST Act or the SGST Act, as the case may be, or both. These statutory dues are required to be paid by all the assessees, who are registered under the GST regime, mandatorily. Such payments of statutory dues contribute towards the State Exchequer. If an assessee like the petitioner is not included within the GST regime, then any statutory dues that may be

required to be deposited by an assessee like the petitioner would not be deposited and properly accounted for and such a situation is, albeit, not in the interest of the revenue. It is pertinent to note that in the Statement Table in the Order dated 09.09.2020, no Central Tax/State Tax/Union Territory Tax/Cess is shown as due.

20. At the same time, cancellation of GST registration would entail adverse civil consequences to the person affected as due to cancellation of his/her registration under the GST regime, he/she would be outside it and it would be difficult for the person to carry on any business in a valid manner. It is not in doubt that the impugned Order dated 09.09.2020 whereby the petitioner's GST registration has been cancelled, is an order which would bring adverse consequences to the petitioner.

21. When the contents of the impugned Order dated 09.09.2020 are looked at, it is found that in the impugned Order, the Proper Officer has not assigned any reason as to why the petitioner's GST Registration has been cancelled.

22. On perusal of the impugned Order, it is evidently clear that the impugned Order is not in conformity with the procedure prescribed in FORM GST REG-19. A speaking order is one which expressly states the reasons for the decision. In other words, a speaking order speaks for itself by assigning the reasons behind the conclusion. If an order is passed without giving a reason by the concerned authority, then the order is a non-speaking one. Non-speaking order is one which does not provide a clear reason for its decision. The fact that the petitioner-assessee did not submit any Reply to the Show Cause Notice dated 27.08.2020 or did not appear before the Proper Officer for personal hearing, with no date & time appointed by him, does not absolve the Proper Officer from the obligation of passing a speaking order as any order which brings adverse consequence to a person cannot be a mere paper formality.

23. An adjudicating authority exercising statutory power of cancelling registration under the CGST Act must record reasons for its decision, unless such obligation is expressly or impliedly dispensed with. It is implicit in the principles of natural justice and fair play that an adjudicating authority should record reasons as it is part of fair procedure, more particularly, when the decision is likely to affect the right of the person concerned. Recording of reason is also *prima facie* suggestive of conscious application of mind on the part of the authority. The obligation to record reasons is a possible check against arbitrary action on the part of the adjudicating authority invested with the statutory power to take a decision which is likely to affect the right of the person concerned. When the statute itself contains a prescription to record reasons in the decision, absence of reasons in the decision falls short of the prescription and would be in violation of the prescription and thus, illegal. A look at FORM GST REG-19 also goes to substantiate that the Proper Officer is obligated to record his reason[s] for taking the action of cancellation of GST Registration.

24. Thus, from every standpoint, the impugned Order dated 09.09.2020 is not a speaking order. As such, the impugned Order dated 09.09.2020 is found to be one which is passed without any application of mind. For the afore-stated reasons, the impugned Order dated 09.09.2020 cannot stand the scrutiny of law and is liable to be set aside and quashed.

25. A submission has been made that the writ petition has been preferred with delay as the petitioner has filed the writ petition in March, 2025, that is, after almost four years from the order of cancellation of registration. Although the petitioner has not approached the Court immediately after the order of cancellation of registration, this Court is of the considered view that when the extent of vulnerability of the order of cancellation of registration is due to not meeting the statutory prescription of recording reasons is pitted against the delayed approach, the vulnerability of the order of cancellation of registration

would far outweigh the delayed approach because of its likely adverse affect on a registered person like the petitioner.

26. For all the afore-mentioned reasons, the impugned Order dated 09.09.2020 is set aside and quashed. With the setting aside and quashing of the impugned Order dated 09.09.2020, the matter stands reverted back to the stage of issuance of the Show Cause Notice in FORM GST REG-17.

27. It is discernible from a reading of the proviso to sub-rule [4] of Rule 22 of the CGST Rules that if a person who has been served with a Show Cause Notice under Section 29[2][c] of the CGST Act is ready and willing to furnish all the pending returns and to make full payment of the tax dues along with applicable interest and late fee, the Proper Officer, shall drop the proceedings and pass an order in the prescribed Form, that is, Form GST REG-20.

28. In the above fact situation obtaining in the case in hand, it is open for the petitioner-assessee to submit a Reply to the Show Cause Notice dated 27.08.2020 showing reason[s] as to why the GST Registration should not be cancelled in terms of sub-rule [2] of Rule 22 of the CGST Rules read with Section 29[2][c] of the CGST Act. In the alternative, the petitioner-assessee, at the time of or instead of, replying to the Show Cause Notice served under sub-rule [1] of Rule 22 of the CGST Rules, can furnish all the pending returns and make full payment of the tax dues along with the applicable interest, late fee and penalty, if any. It is, therefore, observed that it would be open for the petitioner-assessee to avail either of the two options. This Court, for ends of justice, deems it just and proper to grant a period of one month from today to the petitioner to avail either of the two permissible options. If the petitioner wants to know her outstanding dues including the tax dues, applicable interest, late fee, penalty, etc. the Proper Officer shall furnish or shall supply such details to the petitioner if the petitioner approaches him within the said period of one month. It is further observed that depending on the option availed by the petitioner-assessee, the Proper Officer shall proceed thereafter, in

accordance with the procedure prescribed in Section 29 of the CGST Act and Rule 22 of the CGST Rules to bring the process to its logical conclusion by passing appropriate order either in FORM GST REG-19 or FORM GST REG-20, as the case may be, as expeditiously as possible, but, not later than a period of one month thereafter.

29. With the observations made and the directions given above, the writ petition stands allowed to the extent indicated above. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant