

Neutral Citation No. - 2023:AHC:110056

RESERVED

Court No. - 6

Case :- WRIT TAX No. - 397 of 2023

Petitioner :- M/S Star Metal Company

Respondent :- Additional Commissioner Grade-2 And Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL,J.

1. Heard Shri Aditya Pandey, learned counsel for the petitioner and learned Standing Counsel for the State – respondents.
2. The present writ petition has been filed challenging the order dated 01.12.2020 passed by the respondent no. 2 cancelling the GST registration of the petitioner, order dated 19.03.2021 passed by the respondent no. 2 rejecting the petitioner's revocation application for cancellation of the registration as well as the order dated 14.10.2022 passed by the respondent no. 1 confirming the rejection of the revocation application of the petitioner.
3. The petitioner was a proprietorship firm. The petitioner claimed to have filed its returns on time and also deposited due taxes. A survey was conducted at the business place of the petitioner on 27.09.2019 and in the said survey, the business place of the firm was not found as disclosed in the registration certificate. Thereafter, the registration of the petitioner was cancelled vide order dated 01.12.2020. Thereafter, the petitioner moved a revocation application on 28.01.2021, which was rejected vide order dated 19.03.2021. Aggrieved by the said order, the petitioner preferred an appeal, which was also dismissed vide order dated 14.10.2022. Hence, this writ petition.
4. Learned counsel for the petitioner submits that the impugned orders have been passed in contravention of the provisions of the Act & Rules as opportunity of hearing was not given to the

petitioner. He further submits that on filing the revocation application on 28.01.2021, the order was passed on 19.03.2021 and surprisingly, a notice in Form GST REG – 23 dated 26.04.2021 was received. He further submits that once an order has already been passed in the month of March without providing any opportunity of hearing to the petitioner, the notice issued on 26.04.2021 to show cause as to why rejection of application for revocation of cancellation of registration be not passed, could not be issued. He further submits that the cancellation of registration also suffers from illegality as none of the conditions mentioned in section 29(2) of the UP GST Act are complied with. In support of his contentions, he has placed reliance upon the judgements of this Court in *M/s Shyam Sundar Sita Ram Traders Vs. State of U.P. & 2 Others* (Writ Tax No. 991/2021, decided on 20.03.2023), *Apparent Marketing Private Limited Vs. State of U.P. & 3 Others* (Writ Tax No. 348/2021 decided 05.03.2022), *M/s Chandra Sain Vs. Union of India & Others* (Writ Tax No. 147/2022, decided on 22.09.2022) and *Drs. Wood Products Vs. State of U.P. & Others* (Writ C No. 21692/2021, decided on 05.08.2022). He prays for allowing the present writ petition.

5. Rebutting the said submissions, learned Standing Counsel submits that the orders have been passed in accordance with law. He further submits that the petitioner, at the time of inspection, was not found and the firm is treated to be a bogus firm and therefore, the impugned orders have legally been passed. He prays for dismissal of the writ petition.
6. Heard learned counsel for the parties and perused the records.
7. Admittedly, the registration of the petitioner was cancelled on the basis of the survey dated 27.09.2019 with the report that the disclosed business place of the firm was not found and therefore, the firm is bogus. On the said basis, the registration was cancelled on 01.12.2020. The petitioner moved application for

revocation of cancellation of the registration on 28.01.2021, but the same was rejected. Thereafter, on 26.04.2021, a show cause notice was issued to the petitioner to show cause as to why the revocation of cancellation of registration may not be rejected. This Court in ***Apparent Marketing Private Limited*** (supra) has held as under:-

“12. Having heard learned counsel for the parties and having perused the record, in the first place, cancellation of registration has serious consequences. It takes away the fundamental right of a citizen etc. to engage in a lawful business activity. In the present case, undisputedly, the registration claimed by the assessee had been granted by the respondent authority. Therefore, a presumption does exist as to such registration having been granted upon due verification of necessary facts. If the respondent proposed to cancel the registration thus granted, a heavy burden lay on the respondent authority to establish the existence of facts as may allow for such cancellation of registration. Section 29(2) of the Act reads as below:

"Section 29. Cancellation of suspension of registration

(1) ...

(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 there under 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.

[PROVIDED FURTHER, that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.]"

13. Therefore, the registration once granted could be cancelled only if one of the five statutory conditions was found present. Per se, no registration may be cancelled by merely describing the firm that had obtained it, was "bogus". The word "bogus" has not been used by the statute. The only contingency to which such expression may relate may be one appearing under Clauses (c) and (d) of Section 29(2) of the Act being where a registered firm does not commence its business within six months of its registration. Other than that, the term "bogus" may also refer to a satisfaction contemplated by Section 29(2)(c) of the Act where registration may be cancelled if the registered firm has not furnished its return for continuous period of six months. Those conditions have not been shown to exist in this case.

16. Though the notice for cancellation of registration may not be placed on a high pedestal of a jurisdictional notice, at the same time, unless the essential ingredients necessary for issuance of such notice had been specified therein at the initial stage itself, the authorities cannot be permitted to have margin or option to specify and/or improve the charge later.”

8. For the reasons stated above, the order dated 01.12.2020 passed by the respondent no. 2, order dated 19.03.2021 passed by the respondent no. 2 as well as the order dated 14.10.2022 passed by the respondent no. 1 cannot be sustained. They are hereby quashed.
9. The writ petition succeeds and is, accordingly, allowed.
10. It is left open to the respondent – authority to issue a fresh notice on any specific ground mentioned under section 29(2) of the GST Act, which proceeding, if initiated, may be decided on its own merit without being prejudiced by any observation made in this order.

Order Date :-19/05/2023

Amit Mishra