

Court No. - 38

Case :- WRIT TAX No. - 1064 of 2021

Petitioner :- M/S Ram Krishna Garg Supplier

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Udai Chandani, Nitin Chandra Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh, J.

1. Heard Shri Udai Chandani, learned counsel for the petitioner and learned Standing Counsel for the revenue. No counter affidavit has been filed despite stop order dated 20.5.2022 (passed on the listing application).

2. Present writ petition has been filed against the order dated 23.9.2021 passed by Proper Officer/respondent no.3 - Additional Commissioner, Grade-II (Appeal), Trade Tax, Banda. By that order, the appeal authority has confirmed the order dated 20.07.2021 passed by respondent no.4/Assistant Commissioner, Banda Sector Trade Tax, Banda, cancelling the petitioner's registration in exercise of power vested in that authority under Section 29(2) (a) of U.P. Goods and Services Tax Act 2017 (hereinafter referred to as the Act).

3. Having heard learned counsel for the parties and having perused the record, the order dated 20.07.2021 and the consequential appeal order dated 23.9.2021 are wholly unsustainable in law. Earlier, the petitioner was visited with the notice dated 8.6.2021 making mention of certain infractions committed by him under other laws (excluding the Act), in the execution of certain service contracts awarded by the Nagar Palika Parishad, Atarra, Banda. Petitioner had submitted its reply thereto.

4. Thereafter, on 09.07.2021, a show cause notice was issued with reference to Section 29(2)(a) of the Act. It reads as below:

"Reference No:ZA090721191355C

Date: 09/07/2021

To
RAMKRISHNA
INDRA NAGAR, NARAINI, NARAINI, BANDA, BANDA, Banda, Uttar Prades.
210129

Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1. Non compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

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.

Please note that your registration stands suspended with effect from 09/07/2021

Place: Uttar Pradesh

Date: 09/07/2021"

5. The reply furnished by the petitioner apart, the said authority proceeded to pass the impugned order dated 20.07.2021. That reads as below:

"RAMKRISHNA
INDRA NAGAR, NARAINI, NARAINI, BANDA, BANDA, Banda, Uttar Prades. 210129
GSTIN/UIN :90ARPPD3794C1ZL
Application Reference No. (ARN): AA090721036107E

Date: 09/07/2021

Order for Cancellation of Registration

This has reference to your reply dated 20/07/2021 in response to the notice to show cause dated 09/07/2021 whereas no reply to notice to show cause has been submitted;

The effective date of cancellation of your registration is 19/07/2021

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and basis thereof is as follows:

The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before 30/07/2021 failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

Head	Central Tax	State Tax/UT Tax	Integrated Tax	Cess
Tax	0	0	0	0
Interest	0	0	0	0
Penalty	0	0	0	0
Others	0	0	0	0
Total	0.0	0.0	0.0	0.0

Place: Uttar Pradesh

Date: 09/07/2021"

6. That order has been confirmed in appeal by referring to allegations contained in the first notice dated 08.06.2021 that was issued with respect to infractions made under other laws.

7. Cancellation of registration has most serious civil consequences. While Section 29(1) of the Act provides for specific grounds for cancellation with effect from the date of occurrence of certain events, sub-section (2) provides for harsher consequences including cancellation of registration with retrospective date. However, a registration may not be cancelled on mere whims and fancies of the Proper Officer. It may be cancelled under sub-section (2) of Section 29 of the Act, if the registered person contravenes any provision of the Act or Rule as may have been prescribed for that purpose or if such person does not furnish returns for three tax periods consecutively or does not furnish returns for six months continuously or he does not commence business within six months of grant of registration or he is found to have obtained registration by means of fraud, wilful misstatement or suppression of facts.

8. In the present case, the show cause notice was issued, ostensibly with reference to Section 29(2)(a) of the Act, inasmuch as, the notice dated 9.7.2021 alleged non-compliance of specified provisions of GST Act or the Rules. However, that notice did not disclose the exact violation of the Act or the Rules, alleged. Unless that allegation was specified in the notice with details and unless material considered adverse to the petitioner had been confronted to it for the purposes of eliciting its reply thereto, the notice dated 9.7.2012 would remain completely vague and mute.

9. A person who may be visited with the notice proposing such a harsh civil consequence had a perfect right to be informed of the exact allegations levelled against him. In a way, the harshest penalty contemplated is cancellation or registration of the assessee. The cancellation of the registration has the consequence of bringing the business of an assessee to a

complete stand still. Its a death of his business. It has adverse impact on his fundamental right to do business.

10. The petitioner was not confronted either with the substance of the allegation of violation of the provisions of the Act and the Rules framed thereunder and it is not shown that alleged violations were such, as may have warranted cancellation of the petitioner's registration under Section 29(2)(a) of the Act. Also, since the material if any that may have founded the basis for such allegation had not been confronted to the petitioner, the entire exercise would remain an irregular exercise. In fact, the proceedings had been initiated, continued and concluded without jurisdictional facts shown to exist. Since the cancellation notice did not refer to the notice dated 8.6.2021, reference made to it in the appeal order is irrelevant and uncalled. Even then, it does not make out allegation of violation of Section 29(2)(a) of the Act.

11. In view of the above, the impugned orders dated 23.09.2021, 06.09.2021 and 20.07.2021 are quashed.

12. Accordingly, the present petition is allowed. Let the registration of the petitioner be restored forthwith. Further, it is left open to the revenue authorities to initiate fresh proceedings, if warranted, on cogent material and basis.

Order Date :- 15.7.2022

Prakhar