

M/S Deepak Singh Contractor And General ... vs State Of Up And 2 Others on 3 March, 2025

Author: Piyush Agrawal

Bench: Piyush Agrawal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29647

Court No. - 2

Case :- WRIT TAX No. - 1485 of 2024

Petitioner :- M/S Deepak Singh Contractor And General Order Supplier

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Rajan Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Sri Rajan Srivastava, learned counsel for the petitioner and Sri R.S. Pandey, learned Additional Chief Standing Counsel for the State-respondents.
2. By means of instant writ petition, the petitioner has made the following prayer:-

"I. Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 23.01.2023 passed by the respondent no.3 cancelling the registration of the petitioner under Section 29 of the U.P. Goods and Services Tax, 2017 (Annexure No.2 to the present writ petition) as well as the impugned order dated 10.07.2024

passed by the First Appellate Authority (Annexure No.5 to the present writ petition);

II. Issue a writ, order or direction in the nature of Mandamus directing the respondent no.3 to restore the registration of the petitioner with immediate effect;

III. Issue a writ, order or direction in the nature of Mandamus directing the respondents not to take coercive action against the petitioner pursuant to the impugned order 23.01.2023 passed by the respondent no.3;

IV.

V."

3. Learned counsel for the petitioner submits that the petitioner is a registered dealer, which is engaged in the work of general order supplier to whom a show cause notice was received through e-mail for cancelling the registration under the UPGST Act on 02.01.2023 and the registration was suspended with immediate effect.

4. He further submits that without mentioning any date and time for personal hearing in the aforesaid notice, the impugned order dated 23.01.2023 was passed whereby cancelling the registration of the petitioner within twenty one days. He further submits that due to being fell ill, the petitioner could not aware about passing of such order and the time of filing revocation application got passed over. However, as soon as he came to know about the said order, approached his local counsel and got an appeal filed against the impugned order dated 23.01.2023, which has been rejected without adverting to the grounds mentioned in the appeal. Hence, the present writ petition.

5. He further submits that the order of cancellation of the registration has been passed without any application of mind whatsoever and the same is clear from the first two lines of the cancellation order dated 23.01.2023 itself where the first line thereof says that reply has been filed, and the second line says that no reply has been submitted.

6. This Court on an identical sets of fact was pleased to allow the petitioner and the order impugned therein were quashed.

7. In support of his submission, he has placed reliance upon the judgments of this Court passed in Writ Tax No. 759 of 2024 (Virpratap Vs. State of Up and 2 others) & Writ Tax No.367 of 2021 (Kashish Infra Energy Power Azadpur Vs. State of U.P. and 2 others).

8. Per contra, learned Additional Chief Standing Counsel supports the impugned orders.

9. After hearing the parties, the Court has perused the record.

10. The relevant part of the cancellation order dated 23.01.2023 is reads as under:-

"This has reference to your reply dated 11.01.2023 in response to show cause dated 02.01.2023 whereas no reply to notice to show cause has been submitted;

The effective date of cancellation of your registration is 23.01.2023"

11. The order of cancellation itself says that the authorities have passed the order without application of mind as whereof first line says that 'with reference to the reply dated 11.01.2023', and the second line says that no reply has been submitted.

12. The Division Bench of this Court on an identical sets of fact in the case of Surendra Bahadur Vs. State of U.P. and others (Writ Tax No.172 of 2023), has quashed the order. The said judgment was followed by the Single Bench of this Court in the case of Virpratap (supra). The relevant paragraph of the said judgment is quoted as below:-

"4. Learned counsel appearing on behalf of the petitioner submits that in the first line, the order states that a reply was filed by the petitioner on May 11, 2022 whereas second line records that no reply was submitted. He relies upon a Division Bench judgment of this Court in Writ Tax No.172 of 2023 titled as Surendra Bahadur Singh v. State of U.P. and others decided on August 23, 2023, wherein the Division Bench has held as follows:

"6. Learned counsel for the petitioner argues that although no fault can be found with the appellate order dismissing the appeal as Appellate Authority does not have the power to condone the delay in terms of the scheme of the Act, however, he argues that the order cancelling the registration is without application of mind; he draws my attention to the impugned order dated 07.01.2023, which does not disclose any application of mind. He, thus, argues that the quasi judicial order which has an adverse effect on the right of the petitioner to run business as guaranteed under Article 19 of the Constitution of India, the same has been done without any application of mind which is neither the intent of the Act nor can it be held to be in compliance of the mandate of Article 14 of the Constitution of India. He further argues that as the appeal has not been decided on merit, the doctrine of merger will have no application and it is only the order dated 07.01.2023 which affects the petitioner and as the same is devoid of any reasons, the same can be challenged before this Court as decided by the Hon'ble Supreme Court in the case of Whirlpool Corporation v. Registrar of Trademarks, Mumbai and Ors. - (1998) 8 SCC 1.

7. He further places reliance on the judgment of this Court in the case of Om Prakash Mishra v. State of U.P. & Ors.; Writ Tax No.100 of 2022 decided on 06.09.2022 wherein this Court had recorded that every administrative authority or a quasi judicial authority should necessarily indicate reasons as reasons are heart and soul of any judicial or administrative order.

8. In the present case from the perusal of the order dated 07.01.2023, clearly there is no reason ascribed to take such a harsh action of cancellation of registration. In view of the order being without any application of mind, the same does not satisfy the test of Article 14 of the Constitution of India, as such, the impugned order dated 07.01.2023 (Annexure - 2) is set aside. The petition is accordingly allowed.

9. It is, however, directed that the petitioner shall file reply to the show-cause notice within a period of three weeks from today. The Adjudicating Authority i.e. Assistant Commissioner, Gonda shall proceed to pass fresh order after giving an opportunity of hearing to the petitioner and after considering whatever defence he may take."

5. Learned counsel for the petitioner further relies upon a coordinate Bench judgment of this Court in Writ Tax No.1476 of 2022 titled as M/s Namo Narayan Singh v. State of U.P. and others decided on October 10, 2023 to emphasis the point that providing of reasons in order is of essence in judicial proceedings.

6. In the present case, the facts are similar to one in Surendra Bahadur Singh's case (supra), wherein the appeal was barred by time under Section 107 of the Act. However, the Division Bench in Surendra Bahadur Singh's case (supra) took into consideration the original order and set aside the same being non-reasoned and allowed the petitioner therein to file reply to the show cause notice.

7. In light of the above, I am of the view that the orders impugned herein are liable to be set aside. Accordingly, the order in original dated May 11, 2022 and the order dated February 8, 2024 are quashed and set aside. The petitioner is directed to file its reply to the show cause notice within three weeks from date and the adjudicating authority is directed to proceed de-novo and pass order after granting opportunity of hearing to the petitioner."

13. In view of the above facts as stated as well as in the light of the aforesaid judgment, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.

14. Accordingly, the writ petition is allowed with cost of Rs. 5,000/- to be paid to the petitioner. The matter is remanded to the authority concerned for deciding the same de novo after affording an opportunity of hearing to all the stakeholder, within a period of two months in case the petitioner submits reply within two weeks from today along with certified copy of this order.

15. Amount, if any, deposited by the petitioner pursuant to the impugned orders, shall be refunded to him within a month from the date of production of certified copy of this order.

16. List in Chamber after being filed an affidavit of compliance on behalf of the respondent no.3.

17. Registrar (Compliance) of this Court is directed to communicate this order to the respondent no.3 within 72 Hours.

Order Date :- 3.3.2025 Pravesh Mishra