

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C)No.11791 of 2022

M/s. GKV Sharma

....

Petitioner

Mr. Jatindra Kumar Mohapatra, Advocate

-versus-

Union of India and another

....

Opposite Parties

Mr. Radheshyam Chimanka,
Senior Standing Counsel for
CT & GST Organization

CORAM:

JUSTICE JASWANT SINGH

JUSTICE M.S. RAMAN

ORDER

01.08.2022

Order No.

02.

1. This matter is taken up through virtual/physical mode.
2. The Petitioner has challenged the communication dated 29th April, 2022 indicating non-payment of interest, late fee, penalty and in-eligible credit of Input Tax Credit for the period from July 2017 to January 2021 by way of writ petition filed before this Court invoking Article 226 of the Constitution of India for indulgence.
3. It is submitted by learned counsel for the Petitioner that against the order of cancellation of Registration Certificate under Section 29 of the Central Goods and Service Tax Act, 2017 (for short, 'the CGST Act, 2017'), the Petitioner moved this Court in writ petition bearing W.P.(C) No.33418 of 2021, which came to be disposed of *vide* order dated 1st December, 2021 with the following observation:-

“xxx

xxx

xxx

xxx

3. Mr. Chimanka, learned Senior Standing Counsel for the Opposite Parties states that as long as delay in filing the revocation application is condoned, and provided the

Petitioner complies with all the requirements of paying the taxes, interest, late fee and penalty due, the 3B Return Form filed by the Petitioner will be accepted by the Opposite Parties.

4. In that view of the matter, the delay in Petitioner's invoking the proviso to Rule 23 of the Central Goods and Services Tax Rules (CGST Rules) is condoned and it is directed that subject to the Petitioner depositing all the taxes, interest, late fee and penalty due and complying with other formalities, the Petitioner's application for revocation will be considered in accordance with law.

xxx xxx xxx xxx”

4. So the Petitioner in order to comply with the direction of this Court has deposited an amount of Rs. 26,13,132/- as tax, Rs.3,63,990/- as interest and Rs.60,000/- as penalty and requested the Assistant Commissioner, GST, Central Excise & Customs for doing the needful as per the order of this Court.

5. It is, therefore, submitted by learned counsel for the Petitioner that compliance has been made in term of direction of this Court on the basis of statement of learned Senior Standing Counsel. However, the Opposite Parties have failed to comply with the direction of this Court as contained in paragraph-5 of the aforesaid order, which is reproduced herein below:-

“5. A downloaded copy of this order will be produced by the Petitioner before the proper officer, and subject to the Petitioner complying with the above conditions, the proper office will open the portal to enable the Petitioner to file the GST return.”

6. It is urged by the counsel for the petitioner that while the tax period from July, 2019 to September, 2019 was subject-matter of earlier writ petition being W.P.(C) No.33418 of 2021, and instead of complying with the direction as made in

paragraph-5 of Order dated 01.12.2021 passed in said writ petition, in the further communication being made on 29th April, 2022 (Annexure-11) the period of non-payment has been shown from July, 2017 to January, 2021. Learned counsel for the Petitioner submitted that the order dated 1st December, 2021 passed by this Court in W.P.(C) No.33418 of 2021 relates to July 2019 to September, 2019 and the Petitioner has deposited the requisite tax, interest and penalty as conceded by the learned Senior Standing Counsel. It is, therefore, obligatory on the part of the Opposite Parties to facilitate filing of returns by revoking the order of cancellation of Registration Certificate.

7. Mr. Radheshyam Chimanka, learned Senior Standing Counsel for the CT & GST Organization did not object to the proposition of the learned counsel for the Petitioner.

8. As conceded by the counsel for the respective parties, having deposited the requisite amounts pertaining to period from July, 2019 to September, 2019 as per the communication dated 17th October, 2020, this Court is of the opinion that the Opposite Parties are required to facilitate the Petitioner to file GST return(s) by opening the Portal. In exercise of powers under Section 30 of the CGST Act, 2017 read with Rule 23 of the Central Goods and Services Tax (CGST) Rules, 2017 the Proper Officer shall revoke the order of cancellation of Registration Certificate. Subject to verification of payments made as asserted in the writ petition by the Proper Officer, the authority concerned is required to pass necessary orders revoking the cancellation of Registration Certificate and allow

the Petitioner to file returns within a period of two weeks from the date of production of certified copy of this Order.

8. With the aforesaid observation and direction, the writ petition is disposed of.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Jyostna August 1st, 2022
Cuttack

