

[2023] 155 taxmann.com 643 (Andhra Pradesh)/[2023] 100 GST 635 (Andhra Pradesh)/[2023] 79 GSTL 58 (Andhra Pradesh)[15-09-2023]

GST : Where show cause notice was issued without necessary details and final order of cancellation of Registration was passed, since principles of natural justice were not followed, both SCN and order were liable to be set aside; registration of petitioner was to be restored

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[2023] 155 taxmann.com 643 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Hindustan Organics

v.

State of A.P.*

U.DURGA PRASAD RAO AND A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO. 22588 OF 2023

SEPTEMBER 15, 2023

Registration - Cancellation of registration - Principles of natural justice - Show cause notice issued to cancel registration of assessee was not reflecting necessary particulars to enable petitioner to offer his explanation - There were no other relevant requisite facts mentioned to prove allegation that petitioner committed fraud or wilful misstatement or suppression of facts related to his obtaining registration - Though it was alleged that 'person' issued invoice or bill without supplying goods or services or both in violation of provisions of Act and Rules but it was not clear whether 'person' means petitioner or his vendors and particulars of fake invoices and bills were not provided - From allegation of availing ITC in violation of section 16, nature of violation of provisions, committed by petitioner was not clear - Regarding allegation of violation of provisions of rule 86B, relevant particulars were not provided - However, petitioner offered his remarks to extent possible in respect of each allegation made in show cause notice - However, in final order said explanation was neither referred nor merits of explanation were considered by 1st respondent - Thus, 1st respondent, in issuing show cause notice without necessary details and passed final order of cancellation of Registration, had not followed principles of natural justice; both were liable to be set aside - Registration of petitioner was to be restored [Section 29, read with section 16, of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Rule 21, read with rule 86, of Central Goods and Services Tax Rules, 2017/Andhra Pradesh Goods and Services Tax Rules, 2017] [Paras 12 to 14] [In favour of assessee]

ORDER

U. Durga Prasad Rao, J. - Challenging the cancellation of Registration Certificate *vide* order dated 3-8-2023 passed by the Deputy Assistant Commissioner (ST), Nandyal-I/2nd respondent, present Writ Petition is filed.

2. Heard Sri Dr. M.V.K. Moorthy, learned senior counsel appearing for the petitioner and learned Government Pleader for Commercial Tax representing the respondents.

3. Learned senior counsel submits that the 2nd respondent issued show cause notice dated 12-6-2023 alleging that the petitioner has committed fraud, willful misstatement or suppression of facts in terms of section 29(2) (e) of CGST/SGST Act; alleged that the person issued invoices or bills without supply of goods or services or

both in violation of the rule 21(b) of the Act and also alleged that the petitioner avails ITC in violation of the provisions of section 16 of the Act and also violated the provisions of rules 86B and 21 (g), without furnishing their requisite particulars.

4. Learned senior counsel further submits that while issuing show cause notice, dated 12-6-2023 GST registration of the petitioner was put under suspension with immediate effect i.e., on 12-6-2023. He further contends that though notice is cryptic, the petitioner in due compliance of the notice submitted his reply/explanation on 6-7-2023 furnishing the required particulars to the extent possible as against the allegations contained in the show cause notice. Pursuant thereof, the cancellation order has been passed.

5. Learned senior counsel also submits that the impugned order of cancellation of Registration came to be passed on 3-8-2023 by the 1st respondent, without referring and taking into consideration the explanation dated 6-7-2023 offered by the petitioner. Learned counsel would thus submit that by issuing the cryptic show cause notice and passing final order without referring to the explanation of the petitioner and without affording an opportunity of hearing to the petitioner, the 1st respondent committed violation of principles of natural justice. He thus sought to set aside the impugned order.

6. Learned Government Pleader supported the impugned show cause notice dated 12-6-2023 and the final order dated 3-8-2023, stating that both of them contain sufficient particulars and the petitioner has also submitted his explanation to the show cause notice, and therefore, now it cannot be pleaded that the show cause notice is bereft of required particulars.

7. The points for consideration are,

- (i) Whether the show cause notice is devoid of required particulars, and thereby, it was not possible for the petitioner to furnish/offer detailed explanation?
- (ii) Whether in the final order of cancellation of Registration dated 3-8-2023, the 1st respondent has not referred and considered the explanation dated 6-7-2023 offered by the petitioner?
- (iii) If Points 1 and 2 are held in affirmation, whether there occurred violation of principles of natural justice?

Points (i) to (iii):-

8. As all these points are inter connected, they are considered and answered together. We have perused the show cause notice dated 12-6-2023 issued by the 1st respondent. Since the show cause notice is a brief one, the same is reproduced here for the sake of convenience:

"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. Section 29(2)(e)-registration obtained by means of fraud, willful misstatement or suppression of fact.
2. Rule 21(b) - person issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder.
3. Rule 21(e)-person avails ITC in violation of the provisions of section 16 of the Act or the rules made thereunder.
4. Rule 21(g) - person violates the provision of rule 86B

Your 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 12-6-2023."

9. As can be seen from the show cause notice, so far as the 1st allegation is concerned, the 1st respondent only mentioned that the registration was allegedly obtained by means of fraud, willful misstatement or suppression of facts. However, there are no other relevant requisite facts mentioned in the said allegation as to the manner

how the petitioner committed fraud or willful misstatement or suppression of the facts relating to his obtaining registration. In the present form of allegation, it will be difficult for anybody including the petitioner to offer his explanation to the said allegation No. 1. Therefore, as rightly submitted by the learned senior counsel for the petitioner, said allegation is vague and bereft of relevant particulars.

10. In so far as the second allegation is concerned, it is stated, the 'person' issued invoice or bill without supplying goods or services are both, in violation of the provisions of this Act and the rules made thereunder. Here also the said allegation is not clear enough to communicate whether the "person' means the petitioner herein or his vendors and particulars of fake invoices and bills. Therefore, this allegation is also as vague as it could be without giving an opportunity to the petitioner to submit his explanation in a proper manner.

11. The third allegation is to the effect that in terms of Rule 21(e), 'person' avails ITC in violation of provisions of section 16 of the Act. This allegation is also not clear as to what is the nature of the violation of the provisions, committed by the petitioner under section 16 of CGST/AGST Act.

12. So also the allegation No. 4 is to the effect that in terms of rule 21(g) the assessee has allegedly violated the provisions of rule 86B is bereft of relevant particulars. Thus as can be seen, the show cause notice is not reflecting the necessary particulars to enable the petitioner to offer his explanation.

13. We have gone through the explanation dated 6-7-2023, a copy of which filed along with material papers. Said explanation shows that the petitioner seems to have offered his remarks to the extent possible, in respect of each allegation made in the show cause notice. Then the final order dated 3-8-2023 shows, curiously said explanation was neither referred in the said order nor the merits of the explanation are considered by the 1st respondent.

14. Thus, on a conspectus of the facts, we are of the considered view that the 1st respondent, in issuing the show cause notice without necessary details and passing the final order of cancellation of Registration, not followed the principles of natural justice, and therefore, the show cause notice dated 12-6-2023 as well as the final order dated 3-8-2023 are liable to be set aside and are accordingly set aside. The respondent authorities are directed to restore the registration of the petitioner, within a period of one week from the date of receipt of a copy of this order. We must make it clear that this order will not preclude the respondents to issue a fresh show cause notice with necessary particulars and to proceed in accordance with law.

15. The Writ Petition is disposed of accordingly. No costs.

As a sequel, interlocutory applications pending, if any, in this case shall stand closed.

SB

* In favour of assessee.