

[2022] 145 taxmann.com 363 (Andhra Pradesh)/[2023] 95 GST 788 (Andhra Pradesh)/[2023] 69 GSTL 394 (Andhra Pradesh)[26-09-2022]

GST : Where first notice was issued without mentioning provisions of law which were alleged to have been violated and second notice was issued without providing opportunity to petitioner to submit his explanation, impugned order of cancellation of registration was to be set aside and matter was to be remanded

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[2022] 145 taxmann.com 363 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Hero Wiretex Ltd.

v.

Union of India \*

SRI. C. PRAVEEN KUMAR AND A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO. 28022 OF 2022

SEPTEMBER 26, 2022

Registration - Cancellation of - First show cause notice was issued on 17-5-2022 informing petitioner-assessee about cancellation of GST registration due to non-compliance of provisions in GST Act and Rules - Another show cause notice, was issued indicating that petitioner had submitted some fake invoices obtained from various non-existent/dummy firms for availing benefit of ineligible Input Tax Credits - HELD : First notice issued by respondent was bereft of provisions of law which were alleged to have been violated by petitioner - Second notice was issued without providing opportunity to petitioner to submit his explanation - Impugned order of cancellation of registration was to be set aside and matter was to be remanded back [Section 29 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 3, 4, 8 and 9] [In favour of assessee/Matter remanded]

Challa Gunaranjan and Ms. Jyothi Ratna Anumolu, Ld. Counsels for the Petitioner. Smt. Naga Raja Kumari, Ld. Asstt. Govt. pleader for the Respondent.

## ORDER

C. Sri. Praveen Kumar, J. - Heard Sri Challa Gunaranjan and Ms.Jyothi Ratna Anumolu, learned counsels appearing for the petitioner, Smt.Naga Raja Kumari, learned Assistant Government Pleader for Commercial Tax appearing for the respondents and with their consent, this writ petition is disposed of at the stage of admission.

2. The present Writ Petition came to be filed under Article 226 of the Constitution of India seeking the following relief:—

"..... to pass order or orders, direction or writ more particularly in the nature of mandamus declaring the impugned order bearing Ref.No.37AADCS1425R1ZY dated 6-7-2022 as illegal, arbitrary and violative of the provisions of the CGST/APGST Act and Rules therein and violative of the principles of natural justice and petitioner's fundamental right under Article 14 and Article 19(1)(g) of the Constitution of India and to consequently set aside the same and to direct the 3rd respondent to revoke the cancellation of the petitioner's GST bearing 37AADCS1425R1ZY vide impugned order bearing Ref.No.ZA3707220080305 dated 6-7-2022."

3. As seen from the record, a show cause notice was issued on 17-5-2022 informing the petitioner about the cancellation of the GST registration due to non-compliance of certain provisions in the GST Act or the Rules made there under. Later on, another show cause notice, dated 27-5-2022, came to be issued, which indicates that the petitioner has submitted some fake Input Tax Credit invoices claiming benefit. The said show cause notices came to be challenged on the ground that the material on which reliance was placed for issuing the show cause notices or for passing the order impugned was not furnished to the petitioner. It is urged that the first show cause notice does not contain the provisions of the GST Act which were said to have been violated. However, explanations to the said show cause notices were submitted and order impugned came to be passed cancelling the registration, relying on certain documents which were also not supplied to the petitioner.

4. Learned counsel for the petitioner mainly submits that there is no evidence to show that the material, which was alleged to have been enclosed along with the show cause notices, was the material which was relied upon by the authority while passing the order and since the order does not indicate the material relied upon, pleads quashing of the same.

5. However, the learned Government Pleader for Commercial Taxes opposed the same contending that the material supplied to the petitioner was relied upon and as such, there is no illegality or incorrectness in the order impugned.

6. A perusal of the show cause notice dated 27-5-2022, goes to show that as the petitioner herein has not complied with specified provisions of GST Act or the Rules made there under, he was asked to submit his explanation within a period of seven working days from the date of service of the said notice. One fact which is required to be noted here is that the said show cause notice does not contain the provisions of law alleged to have been violated by the petitioner.

7. During the course of hearing, learned Government Pleader placed on record another show cause notice dated 27-5-2022. The said show cause notice contain facts which are reflected in the earlier show cause notice. The said show cause notice refers to fake invoices obtained from various non existent/dummy firms for availing benefit of ineligible Input Tax Credits. But, however, learned counsel for the petitioner submits that the said show cause notice was not served on the petitioner and as such, he could not respond to the contents of the said show cause notice, which appears to have been made, the basis to pass the impugned order.

8. Having regard to the facts in issue; as the first notice issued is bereft of provisions of law, which are alleged to have been violated; and as the second notice, which was issued on the very same day, contains details, to which no opportunity was given to the petitioner to submit his explanation, this Court is of the opinion that the order under challenge is liable to be set aside and the matter be remanded to the 3rd respondent.

9. Hence, the Writ Petition is allowed setting aside the order under challenge, dated 6-7-2022 and the matter is remanded back to the 3rd respondent, who shall issue a fresh notice, giving sufficient time to the petitioner for responding to the same and thereafter, pass orders in accordance with law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

SHREYA

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\* Partly in favour of assessee.