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[2024] 163 taxmann.com 767 (Andhra Pradesh)[19-06-2024]

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GST : Where writ petition was filed by assessee challenging cancellation of its registration under GST on ground that assessee was not supplied with particulars of certain dealers who allegedly passed on ITC to assessee without supply of goods, since SCN provided required particulars, assessee was to be given opportunity to avail statutory remedy

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[2024] 163 taxmann.com 767 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

M.R. Metals

v.

Assistant Commissioner, (ST)\*

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

WRIT PETITION NO. 23518 OF 2023

JUNE 19, 2024

Registration - Cancellation of - Show cause notice - Non-supply of particulars - Assessee was issued show cause notice to cancel registration on ground that suppliers had availed ITC without actual receipt of goods and had indulged in passing on such credit to assessee without supply of goods - Assessee filed a detailed objections - It was stated that impugned order was in violation of principles of natural justice as alleged reports regarding suppliers issued by GST authorities which are basis for issuing show cause notice were not supplied to assessee - HELD : There was no force in contention of assessee that show cause notice was bereft of required particulars and thereby principles of natural justice were violated - However, assessee was to be given an opportunity to assessee either to file an application under section 30 of GST Act for revocation of cancellation, or to challenge impugned order by way of filing an appeal [Section [29](#), read with sections [30](#) and [107](#), of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Rule 21 of Central Goods and Services Tax Rules, 2017/Andhra Pradesh Goods and Services Tax Rules, 2017] [Paras 7 to 9] [In favour of revenue]

#### CASE REVIEW

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*Whirlpool Corporation v. Registrar of Trade Marks* [1998] 8 SCC 1 (para 8) followed.

#### CASES REFERRED TO

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*Whirlpool Corporation v. Registrar of Trade Marks* [1998] 8 SCC 1 (para 7).

V. Siddharth Reddy for the Petitioner.

#### ORDER

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**U. Durga Prasad Rao, J.** - The petitioner prays for writ of mandamus declaring the action of the 1<sup>st</sup> respondent in cancelling the registration of the petitioner under CGST/APGST Act, 2017 as illegal, arbitrary, highhanded and vitiated on account of violation of principles of natural justice and violative of Articles 19 and 21 of the Constitution of India and consequently set aside the impugned proceedings of the 1<sup>st</sup> respondent in Form GST REG-19, dated 15.07.2023 and pass such other orders deemed fit in the circumstance of the case.

2. The petitioner's case succinctly is thus:

- (a) Petitioner is a proprietary concern engaged in the business of purchase and sale of iron scrap and petitioner is registered with GSTIN No. 37AUVPA0929K1Z7 on the rolls of 1<sup>st</sup> respondent. The petitioner has been regularly filing monthly returns and making payment of taxes as per GST Act, 2017 after availing ITC.
- (b) While so, 1<sup>st</sup> respondent issued a show cause notice dated 23.06.2023 U/s 29 of SGST Act r/w Rule 21 of CGST Rules, 2017 proposing to cancel the registration of the petitioner on the alleged ground that the suppliers of the goods to the purchaser has availed ITC without actual receipt of goods and indulged in passing on such credit to the petitioner without supply of goods. The 1<sup>st</sup> respondent, in this regard relied on certain alleged reports allegedly received by him in respect of few suppliers by the respective GST authorities. However, the petitioner was not supplied the reports allegedly sent by respective GST authorities of the suppliers of the petitioner. In spite of his obligation under law to supply all the incriminating material along with show cause notice to enable the petitioner to respond in an effective manner even the allegations leveled in the show cause notice were also not correct. They are baseless and contrary to the Assessment Order.
- (c) In response to the show cause notice, the petitioner filed a detailed objections dated 26.06.2023 disputing the allegations made in the show cause notice and requested to drop the proposed action. Petitioner contended that if for argument sake the allegations of fake invoices and claim of ITC without movement of goods as alleged by the 1<sup>st</sup> respondent is admitted to be true and consequently there is no purchase of goods by the petitioner, equally there cannot be any sale of goods by the petitioner, inasmuch as, without inward receipt of goods, there cannot be outward sale of goods. Thus, if the 1<sup>st</sup> respondent disbelieves the purchases, he should equally disbelieves the sales. However, without considering all these aspects, the 1<sup>st</sup> respondent passed the impugned order dated 15.07.2023 cancelling the registration of the petitioner on untenable grounds and also on the grounds which were not raised in the show cause notice. The impugned order is in violation of principles of natural justice as the alleged reports issued by the GST authorities which are the basis for issuing show cause notice were not supplied to the petitioner. It is further submitted that since the petitioner was not properly advised, he could not file a petition U/s 30 of CGST Act, 2017 for revocation of registration.

Hence the writ petition.

3. Heard arguments of learned counsel for the petitioner Sri V. Siddharth Reddy and learned Government Pleader for Commercial Taxes for respondents.

4. The pivotal argument of learned counsel for the petitioner Sri V. Siddharth Reddy is that the petitioner never indulged in bogus purchases or supplies to accommodate his suppliers to claim ITC fraudulently. While issuing show cause notice, the 1<sup>st</sup> respondent who claims to have relied on certain reports allegedly submitted to him by certain GST Authorities, has not forwarded those reports to inform the petitioner with which of the dealers the petitioner made bogus transactions to facilitate them to claim ITC wrongfully, so as to give an opportunity to the petitioner to submit an effective reply. Learned counsel thus vehemently argued that principles of natural justice have been violated and therefore the impugned order liable to be set aside.

5. Per contra, learned Government Pleader for Commercial Taxes argued that the writ petition is not maintainable, inasmuch as, the petitioner has alternative remedy to file a petition U/s 30 of APGST Act for revocation of cancellation or to file an appeal against the impugned order before the Appellate Authority U/s 107 of the APGST Act. Learned Government Pleader argued that without pursuing the alternative reliefs the petitioner cannot file the writ petition. Nextly, learned Government Pleader argued that the show cause notice is self-explanatory as the show cause notice contains the particulars of the non-existent dealers from whom the petitioner obtained bogus invoices and therefore the petitioner cannot claim non-supply of material and violation of principles of natural justice. He thus prayed to dismiss the writ petition.

6. The point for consideration is whether there are merits in the writ petition to allow ?

7. POINT: As can be seen, the prime contention of learned Government Pleader is that since the petitioner has an alternative remedy U/s 30 of GST Act to file an application for revocation of cancellation or to assail the

impugned order in the appeal U/s 107 of GST Act, the writ petition is not maintainable. Per contra, the contention of the petitioner is that required particulars are not furnished in the show cause notice dated 23.06.2023 and thereby principles of natural justice have been violated and therefore, the writ petition is maintainable. Law is no more res-integra with regard to the maintainability of writ petition when alternative remedy is available to a party. In *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai* [1998] 8 SCC 1 = MANU/SC/0664/1998 the Apex Court has observed thus:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Qua Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

8. Thus, Hon'ble Apex Court held that in certain contingencies viz., when writ petition is filed for enforcement of fundamental rights, or where there has been a violation of principles of natural justice or when the proceedings impugned are wholly without jurisdiction or the vires of an act is challenged, the writ petition could be maintainable in spite of availability of alternative remedy. In the instant case the petitioner banks upon the violation of principles of natural justice to maintain the writ petition. In this context, a perusal of the show cause notice dated 23.06.2023 shows that the 1<sup>st</sup> respondent has given required particulars of the non-existent tax payers from whom the petitioner allegedly obtained bogus tax invoices. Therefore, we do not find venom in the contention of the petitioner that the show cause notice is bereft of required particulars and thereby the principles of natural justice were violated. Admittedly, the petitioner has alternative remedy to challenge the impugned order which he did not avail. Therefore, we does not deserve any order in the writ petition. However, considering that the petitioner's registration has been cancelled and thereby he cannot continue his business activities, we deem it apposite to give an opportunity to the petitioner to challenge the impugned order either by way of filing a petition U/s 30 of the GST Act or to file an appeal within a reasonable time.

9. Accordingly, the writ petition is dismissed. However, giving an opportunity to the petitioner either to file an application U/s 30 of the GST Act for revocation of cancellation, or to challenge the impugned order by way of filing an appeal and the petitioner can avail either remedy within 15 days from the date of receipt of a copy of this order, in which case the concerned authority shall pass an appropriate order on merits after affording an opportunity of hearing to both parties. No costs.

10. As a sequel, interlocutory applications if any pending, shall stand closed.

WASEEQ

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\*In favour of revenue.