
[2024] 162 taxmann.com 286 (Andhra Pradesh)[07-03-2024]

GST : Cause shown for not being able to file reply to show cause notice issued for cancellation of registration was sufficient and as such, assessee deserved opportunity of hearing to be granted in consonance with principles of natural justice

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[2024] 162 taxmann.com 286 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Raghavaiah Thelapalli

v.

Assistant Commissioner*

RAVI NATH TILHARI AND HARINATH N., JJ.

WRIT PETITION NO. 1743 OF 2024

MARCH 7, 2024

Cancellation of registration - Show cause notice was given to assessee for cancellation of GST registration certificate on ground that assessee did not submit returns for period from September, 2022 to November, 2023 under section 29(2) of CGST Act, 2017 - No reply was filed to show cause notice and impugned order passed for cancelling registration of assessee - Assessee alleged that person who was handling GST matter of assessee's firm left abruptly and assessee was not aware of issuance of show cause notice and assessee admittedly could not submit any reply to notice - Assessee filed petition seeking to set aside order for cancellation of registration-HELD : impugned order suffered from non-application of mind and had been passed mechanically-Cause shown for not being able to file reply to show cause notice was sufficient- Assessee deserved opportunity of hearing to be granted in consonance with principles of natural justice - Impugned order quashed with direction that, pursuant to show cause notice, assessee should submit reply within period of three weeks from date of receipt of copy of order, along with copy of order to competent authority, who should pass appropriate orders afresh within further period of three weeks in accordance with law, keeping in view that assessee had already paid amount of Rs. 13,26,788 was also ready to file returns [Section 29(2) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 13, 14 and 15] [Partly in favour of assessee]

S. Suri Babu *for the Petitioner.*

ORDER

Ravi Nath Tilhari, J. - Heard Sri S. Suri Babu, learned counsel for the petitioner and Sri Shreyas Reddy, learned Government Pleader for Commercial Tax for the respondents.

2. This writ petition under Article 226 of the Constitution of India has been filed for the following relief:-

"Pleased for the aforesaid reasons, the petitioner prays that this Honble Court may be pleased to issue a Writ or order or direction particularly one in the nature of Writ of Mandamus setting aside the Order for Cancellation of Registration passed by the first respondent in Form GST REG-19 *vide* Ref No. ZA3706230276695 dated 16-6-2023 as arbitrary, illegal, against Principles of Natural Justice, contrary to the provisions of the CGST Act, 2017/APGST Act 2017, and contrary to the Judicial pronouncements of this Hon'ble Court on the selfsame subject and to pass."

3. Learned Government Pleader has received instructions. However, inspite of opportunity granted *vide* order dated 16-2-2024, the counter affidavit has not been filed.
4. Considering the nature of the controversy and the submissions advanced, no fruitful purpose would be served in keeping the petition pending.
5. The challenge is to the order dated 16-6-2023 of cancellation of the petitioner's registration of GST. Previously show cause notice dated 8-5-2023 was given to the petitioner to which no reply was filed.
6. Learned counsel for the petitioner submits that the petitioner could not submit the reply to the show cause notice as the person who is handling the GST matter of the petitioner's firm left abruptly and petitioner was not aware of the issuance of the said show cause notice. He further submits that the managing partner of petitioner's firm *i.e.*, the deponent, was not able to concentrate on the business operations as he was attacked with paralytic stroke. He submits that the order is in the violation of principles of natural justice.
7. Learned counsel for the petitioner further submits that the impugned order also suffers from non-application of mind. The petitioner admittedly could not submit any reply but the order mentions that "whereas reply to the show cause notice has been submitted *vide* ARN Not available".
8. The Cancellation of the petitioner's registration certificate is on the ground that the petitioner did not submit the returns for the period from September, 2022 to November, 2023 under section 29(2) of CGST Act, 2017.
9. Learned counsel for the petitioner further submits that petitioner has already paid amount of Rs. 13,26,788/- (P5) towards the discharge of his liability and he is also ready to file the returns for activation of registration certificate. But in view of the order of cancellation, it is not possible to do so.
10. Learned Government Pleader submits that he has instructions to submit that if the petitioner files the returns, his GST registration can be restored.
11. Learned Government Pleader further submits that though the impugned order mentions that the reply to the show cause notice has been submitted but it is also mentioned that *vide* 'ARN Not Available'. He submits that, that means that the reply is not submitted and consequently the argument of the learned counsel for the petitioner that the order suffers from non application of mind is unsustainable.
12. We have considered the submissions of the learned counsels for the parties and perused the material on record.
13. Admittedly, the petitioner did not file reply to the show cause notice we find force in the submission of the learned counsel for the petitioner that the order suffers from non - application of mind and has been passed mechanically. It is reflective from the order itself a part of which reads as under:

".....

This has reference to show cause notice issued dated 8-5-2023.

Whereas reply to the show cause notice has been submitted *vide* ARN NOT AVAILABLE; and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s):

Section 29(2)(c) - Person, other than paying tax u/s 10, failed to furnish returns for prescribed periods.

....."

14. In para-4 of the affidavit the petitioner has specifically stated the reason for not filing the reply before the authority, *i.e.*, the same reasons as argued before us and mentioned in para 6 of this (*supra*) judgment. On the said point there is no contrary instructions to the learned Government Pleader. Any counter affidavit denying the averments in para-4, of the writ affidavit, has not been filed inspite of opportunity granted. The petitioner has also annexed documents (P3) in support of para 4 of the writ affidavit. We have no reason to disbelieve the same. Consequently, we are of the view that the cause shown for not being able to file the reply to show cause notice is sufficient. The petitioner deserves opportunity of hearing to be granted in consonance with the principles of natural justice.
15. Considering overall facts and for the aforesaid reasons, we allow the writ petition and quash the impugned order dated 16-6-2023 with further direction that, pursuant to the show cause notice dated 8-5-2023(P2), the petitioner shall submit the reply within a period of three (03) weeks from the date of receipt of copy of this

order, along with the copy of this order to the competent authority, who shall pass appropriate orders afresh within the further period of three (03) weeks in accordance with law, keeping in view that petitioner has already paid an amount of Rs. 13,26,788/- (P5) and is also ready to file the returns.

16. Writ Petition stands allowed partly, in the aforesaid terms.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RITA

*Partly favour of assessee.