

[2023] 157 taxmann.com 646 (Andhra Pradesh)/[2024] 81 GSTL 361 (Andhra Pradesh)/[2024] 102 GST 76 (Andhra Pradesh)[23-11-2023]

GST : Cancellation of registration ought to be as a last resort where material would demonstrate that a fraud had been practiced with intention of causing loss to State; where registration of petitioner was cancelled while proceedings were still pending before DGGI and no findings had been rendered by DGGI holding petitioner guilty of infraction of any provisions, registration of petitioner was to be restored

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[2023] 157 taxmann.com 646 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Hero Wiretex Ltd.

v.

Union of India*

G. NARENDAR AND NYAPATHY VIJAY, JJ.

WRIT PETITION NO. 30347 OF 2023

NOVEMBER 23, 2023

Registration - Cancellation of - ITC fraud - Directorate General of GST Intelligence (DGGI) initiated proceeding for cancellation of petitioner's registration on ground that petitioner had fraudulently availed input tax credit without any corresponding movement of goods - Impugned order was passed cancelling registration of petitioner - Aggrieved petitioner filed instant petition on ground cancellation was premature and that material indicated a complete non-application of mind by respondent authority i.e. DGGI - HELD : Proceedings were still pending before DGGI and no findings had been rendered by DGGI holding petitioner guilty of infraction of provisions of statute - Harsh measure of cancellation ought to be as a last resort and where material would demonstrate that a fraud had been practiced with intention of causing loss to State and not as a matter of routine or a default measure - Writ petition was to be allowed and registration was to be restored [Section 29 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 11 and 12] [In favour of assessee]

ORDER

G. Narendar, J. - Heard learned counsel for the petitioner and learned Government Pleader for Commercial Tax for respondents 3 and 4.

2. The petitioner is before this Court being aggrieved by the order of cancellation of registration on the premise that the same is pre-mature and that the material indicate a complete non-application of mind and an erroneous appreciation and understanding of the law by the authority, namely the Directorate General of GST Intelligence (D.G.G.I.).

3. The learned counsel for the petitioner would contend that the proceedings could not have been set in motion on an unproven allegation.

4. It is the case of the petitioner that an allegation was leveled against the petitioner company alleging that they have fraudulently availed of input tax credit without there being any corresponding movement of goods. In sum and substance the petitioner is alleged to have claimed input tax credit, without there being any activity enabling such a claim.

5. Per contra, learned Government Pleader would take the Court through the provisions of Section 29 of the Andhra Pradesh Goods and Services Tax Act, 2017 (for short "A.P.G.S.T. Act") more particularly Sub-Section 2(a) of Section 29 of the A.P.G.S.T. Act and would contend that the contravention of any law would enable the competent authority to initiate proceedings for cancellation of registration. The provisions of Section 29(2) (a) of the A.P.G.S.T. Act reads as under:

"a. registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed."

6. On a plain reading of the above provision, it is apparent that the provision invests the competent authority with power to cancel the registration in the event of there being a contravention of the provisions of the statute. The language deployed is as under - a registered person "has contravened". The word "contravention" is used in the past tense, implying thereby that there has been a finding rendered by a judicial or quasi-judicial authority, that there is a contravention and finding recorded by the competent authority or Court that there has been such a contravention. In the absence of such a contravention in our opinion, the invocation of the provision would be pre-mature.

7. There is no dispute with regard to the facts involved in the instant case. The petitioner has been subjected to investigation by the D.G.G.I. and a reading of the impugned order, more particularly on page No. 3, where the authority has quoted what appears to be the proceedings before the D.G.G.I. In fact, it is observed that the Managing Director of the petitioner firm, who has recorded a statement under section 70 of the Central Goods and Services Act, 2017 (CGST Act) and has voluntarily confessed to the infraction and to the alleged incident. Despite the same, it is not in dispute that the said proceedings are still pending before the D.G.G.I. Pertinently, no findings have been rendered by the D.G.G.I. holding the petitioner guilty of infraction of the provisions of the statute.

8. On a query to the learned Government Pleader as to whether the proceedings are pre-mature or not, the learned Government Pleader would submit that in the event, the proceedings ending in favour of the petitioner, the registration would be restored. We do not find any such power vested in the instant authority to *suo motu* restore the cancelled licence. Be that as it may, this Court is not delving deeper into the said issue.

9. As noted *supra*, a bare reading of the provision would clearly demonstrate that the invocation of the provisions of sub-section 2(a) of Section 29 of the A.P.G.S.T. Act, is available only in the event of there being a determination by a competent Tribunal or Court holding that the registered dealer has in fact contravened the provisions of the Act.

10. We are inclined to adopt this view in view of the fact and the consequences that would flow on account of cancellation of registration. It is not in dispute and it is clearly admitted by the learned Government Pleader that the petitioner firm is a going concern, implying and meaning thereby that the petitioner is also providing livelihood to others. In the event, their registration is cancelled, it would automatically result in closure of business and would sound a death knell to the productivity of the petitioner resulting in loss of livelihood, not only to the management, but also to such other persons employed by them.

11. In that view of the matter, we are of the considered opinion that the harsh measure of cancellation ought to be as a last resort and where the material would demonstrate that a fraud had been practiced with the intention of causing loss to the State and not as a matter of routine or a default measure.

12. Accordingly, the Writ Petition deserves to be allowed in part and accordingly the above referred order, impugned, is set aside. Consequently, the registration shall stand restored. Further, liberty is reserved to the respondents to re-start the process after the proclamation by a competent Tribunal or Court holding that the petitioner is guilty of contravention of the provisions of the statute.

13. The Writ Petition is allowed in part accordingly. There shall be no order as to costs.

In view of disposal of the writ petition, the pending miscellaneous petitions, if any, shall stand closed.

AJAY