

[2024] 160 taxmann.com 447 (Andhra Pradesh)/[2024] 86 GSTL 241 (Andhra Pradesh)[08-11-2023]

GST : Where application for revocation of registration was rejected on grounds that according to field visit report registered premises was a residential house and there was no business running from said premises, since finding recorded in impugned notices and order was finding of fact, assessee was directed to avail statutory remedy of filing an appeal

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[2024] 160 taxmann.com 447 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

ABC Enterprises

v.

State of Andhra Pradesh*

RAVI NATH TILHARI AND A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO. 28853 OF 2023

NOVEMBER 8, 2023

Registration - Cancellation of - Appellate v. writ jurisdiction - Order for cancellation of GST registration was passed - An application for revocation of cancellation was filed by assessee - Subsequently, a notice was issued mentioning that application for revocation was liable to be rejected as according to field visit report registered place was a residential house and there was no business running from said premises - Assessee submitted that registration was taken on residential address and business was conducted at registered address and due to change of mobile number given at time of registration which was not working, communication could not be made - Application for revocation was to be rejected - HELD : Assessee was not running business at registered address was a finding of fact, which prima facie was based on some material in form of field inspection report - It was observed that if assessee's case was contrary, that business was conducted at registered address and if assessee had evidence to prove that, appropriate forum to reappraise evidence to determine finding of fact, was not in writ petition under Article 226 of Constitution of India - It was further observed that, assessee had got statutory alternative remedy of appeal - If assessee had so chosen or advised, remedy of appeal may be availed as per law [Section 29, read with section 107, of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 17 and 19] [In favour of revenue]

G.V. Shivaji for the Petitioner.

ORDER

Ravi Nath Tilhari, J. - Heard Sri G.V.Shivaji, learned counsel for the petitioner and learned Government Pleader for Commercial Taxes for the respondents and perused the record.

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

"pleased to issue a writ order or direction more particularly one in the nature of writ of Mandamus declaring the impugned action of the 4th respondent in issuing impugned proceedings Ref No ZA3707230111770, dt:07-7-2023, cancelling petitioners GST registration No. 37A1AP15009B1ZW and further order issued by the 5th respondent rejecting application for revocation of cancellation vide

impugned proceedings Ref.No. ZA3710230041449 dt:04-10-2023 by declaring them as illegal arbitrary and violative of Article 14 of the Constitution of India apart from contrary to the provisions of GST Act and Rules made there under and also in violation of principles of natural justice consequently *set aside* the same and pass"

3. Learned counsel for the petitioner submits that respondent No. 4 has cancelled the GST registration and further respondent No. 5 has also rejected the petitioner's application for revocation of cancellation *vide* order Ref.No.ZA3710230041449, dated 4-10-2023.

4. The petitioner was issued a show-cause notice dated 26-6-2023. The order of cancellation was passed on 7-7-2023, mentioning that the petitioner did not submit a reply to the show-cause notice.

5. Learned counsel for the petitioner submits that the petitioner submitted a reply on 7-7-2023 itself, *i.e.*, date of the order of cancellation. He however submits that the reply was not filed within the time granted in the show cause notice.

6. For revocation of order dated 7-7-2023, the petitioner filed an application, upon which the notice dated 4-8-2023 was issued, mentioning that the application for revocation was liable to be rejected for the reasons disclosed that "according to the field visit report there is no business running in the mentioned address".

7. The petitioner submitted a reply dated 4-9-2023, interalia submitting that the petitioner is doing business at the registered address and due to change of mobile number given at the time of registration which was not working, the communication could not be made. It is further submitted that there are photographs to show that the business is being run at the registered address.

8. The application for revocation has been rejected by an order dated 4-10-2023, after examining the petitioner's reply on the ground that according to the field visit report there was no business running in the mentioned registered address.

9. Learned counsel for the petitioner submits that the petitioner is running business at the registered address but the petitioner's reply was not considered in proper perspective.

10. Objection is raised by learned Government Pleader for the respondents that the petitioner has got the statutory remedy to file appeal under the Goods and Services Tax Acts (for short 'GST Act').

11. He submits that the physical verification/field visit was made on 26-6-2023 and as per the field visit report, there was no business running in the mentioned address. Subsequently, based on the said report, after affording opportunity of hearing to the petitioner, the order of cancellation of the GST registration and thereafter the order rejecting the application for revocation was passed by Deputy Assistant Commissioner.

12. The fact of physical verification finds mention in para-3 of the petitioner's affidavit in support of the writ petition in which it is interalia submitted that "the petitioner sent an explanation in writing on 6-7-2023, explaining that on 26-6-2023, he received a call from a person introducing himself as officer authorized for physical verification of business and existence of the taxpayer, but the petitioner was out of station at that time and no one was there at the place of business and consequently no one can be present at the time of inspection".

13. Further, the petitioner in his application for revocation interalia mentioned as follows:-

"I entered into business and also other construction related sales with the help of siblings. Due to lack of space for storing stock, I am conducting business on consignment basis and sometime on commission basis. On the basis of availability and demand, we provide contract services also".

In the said application, the petitioner further submitted as follows:

"I accept that there was a procedure mistake on the part of me for not update the changing of my basic structure. If I found so I will take the responsibility of paying all the GST dues without fail."

14. The question if the petitioner was carrying on his business at the registered address or not at the relevant point of time, is a question of fact. The finding recorded in the order of cancellation of GST registration and in the order rejecting the application for revocation, that the petitioner was not running business at the registered address is a finding of fact, which *prima facie* is based on some material in the form of the field inspection report.

15. If the petitioner's case is contrary, that the business was being run at the registered address and if the petitioner has evidence to prove that, as submitted by the learned counsel for the petitioner, the appropriate forum to reappraise the evidence to determine finding of fact, is not in the writ petition under Article 226 of the Constitution of India.

16. Undisputedly, the petitioner has got the statutory alternative remedy of appeal. If the petitioner so chooses or advised, the remedy of appeal may be availed as per the law.

17. We are not inclined to entertain the writ petition.

18. The Writ Petition is dismissed. No order as to costs.

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

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*In favour of revenue.