

[2024] 158 taxmann.com 190 (Andhra Pradesh)/[2024] 81 GSTL 329 (Andhra Pradesh)/[2024] 101 GST 860 (Andhra Pradesh)[18-12-2023]

**GST : Registration cannot be cancelled merely on ground that assessee filed nil returns continuously for more than six months**

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[2024] 158 taxmann.com 190 (Andhra Pradesh)

**HIGH COURT OF ANDHRA PRADESH**

**Kali Shankar Enterprises**

**v.**

**Additional Commissioner\***

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

WRIT PETITION NO.31675 OF 2023

DECEMBER 18, 2023

**Registration - Cancellation of - Nil returns - Assessee filed nil returns continuously for more than six months - A show cause notice was issued to assessee for cancellation of registration - Registration was ultimately cancelled - Appeal was filed by assessee beyond condonable delay period and, thus, same was rejected - HELD : Section 29(2) of CGST Act, does not contain any ground as taken by authority for cancellation of registration - In show cause notice or in order of cancellation, it was not case of respondent authorities that 'nil returns' were filed incorrectly, contravening any provision of GST Act or Rules - Impugned order of cancellation was without jurisdiction and without any valid statutory ground [Section 29 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Rule 22 of Central Goods and Services Tax Rules, 2017/Andhra Pradesh Goods and Services Tax Rules, 2017] [Paras 12 to 16] [In favour of assessee]**

**A.V.A. Siva Karthikeya**, Ld. counsel for the Petitioner. **T.C.D. Sekhar**, Ld. Govt. Pleader for the Respondent.

## **ORDER**

**Ravi Nath Tilhari, J.** - Heard Sri A.V.A. Siva Karthikeya, learned counsel for the petitioner appears through virtual mode and Sri T.C.D.Sekhar, learned Government Pleader for Commercial Tax appearing for respondents.

2. With the consent of both learned counsel, this petition is decided at this stage.

3. Time was granted to obtain instructions on the point as mentioned in the order dated 13-12-2023, in particular with respect to the discrepancies mentioned in the impugned order which reference to the petitioner's reply dated 4-2-2022 and also that no reply was filed. The order dated 13-12-2023 reads as follows:

"Learned counsel for the petitioner submits that the order of cancellation of the petitioner's registration of GST dated 25-1-2022 which is impugned in this petition along with appellate order by which the appeal was also dismissed beyond the period of limitation and the condonable period does not assign any reason for such cancellation.

2. He further submits that though the show cause notice was given stating the reason for the proposed cancellation to which the petitioner could not file the reply, but still a valid reason for cancellation is to

be assigned in the order. He further submits that reason as assigned in the show cause notice, is not covered under section 29 of GST Act for cancellation.

3. We find that the impugned order (Ex.P3) in the first line mentions "this has reference to your reply dated 4-2-2022 in response to the notice to show cause dated 25-1-2022". When it is admitted, that the petitioner did not file any response to the show cause notice, as to how the said fact was mentioned in the impugned order. Further, the second line in the impugned order mentions that "whereas no reply to notice to show cause has been submitted". In our view it cannot be that the reply was filed and was also not filed. The said *prima facie* shows non application of mind in passing the impugned order, which also does not assign any reason for cancellation.

4. Learned counsel for the respondents prays time to obtain instructions.

5. Post on 18-12-2023."

4. The admitted fact by the petitioner is that reply was not filed by the petitioner to the show cause notice.

5. Learned Government Pleader also submits today that no reply was filed and there is mistake which is a clerical mistake, in the impugned order that the reply dated 4-2-2022 was filed.

6. By the impugned order, the petitioner's registration of GST had been cancelled on 11-3-2022. Prior thereto, the petitioner was issued show cause notice dated 25-1-2022 on the following ground "filing nil returns continuously for more than 6 months". The petitioner's appeal against the order dated 11-3-2022 which was filed beyond the condonable delay period was rejected by the order dated 6-11-2023. Challenging the said orders, the present writ petition has been filed.

7. Learned counsel for the petitioner submits that in the impugned order, ground of cancellation is not mentioned. He further submits that in the show cause notice, the ground for proposed cancellation as mentioned, "filing nil returns continuously for more than 6 months" does not fall under any of the clauses under section 29 of the Goods and Services Tax Act nor under Rule 22 of the GST Rules.

8. Learned Government Pleader submits that the appeal was filed with delay beyond the condonable delay period and consequently, the dismissal of the appeal on the ground of delay cannot be faulted.

9. We have considered the submissions advanced and have perused the material on record.

10. Section 29 of GST Act relating to Cancellation or suspension of registration reads as under:

*"29. Cancellation or suspension of registration:*

1. The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,-

- (a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
- (b) there is any change in the constitution of the business; or
- (c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25.

**Provided** that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

(2) the proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or

- (c) any registered person, other than a person specified in clause(b), has not furnished returns for such continuous tax period as may be prescribed; or
- (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, willful misstatement or suppression of facts:

**Provided** that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

**Provided Further** that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed."

**11.** Rule 22 of the Central Goods and Services Tax Rules, 2017 reads as follows:

*"22. Cancellation of registration:*

1. Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.
2. The reply to the show cause notice issued under sub-rule (1) shall be furnished in FORM REG-18 within the period specified in the said sub-rule.
3. Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted under sub-rule (1) of rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.
4. Where the reply furnished under sub-rule (2) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20.
5. The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself."

**12.** It is evident from the bare reading of sub section (2) and Section 29 of the Act that the registration could be cancelled by appropriate officer on any of the grounds mentioned under sub-section (2). In the present case the ground of cancellation is that the petitioner filed nil returns continuously for more than six months. Learned counsel for the petitioner submits that since the returns were Nil, the nil returns were filed.

**13.** Section 29(2) does not contain any such ground for cancellation. In the Rules also there is no such ground for cancellation.

**14.** In the show cause notice or in the order it is not the case of the respondents that the 'nil returns' were filed incorrectly, contravening any provision of the GST Act or the Rules.

**15.** We are of the view that the impugned order of cancellation is without jurisdiction and without any valid statutory ground. The same cannot be sustained.

**16.** So far as the submission of the learned Government Pleader that the appellate order does not suffer from any illegality because after the condonable period of delay, the appellate authority has no jurisdiction to condone the delay and has to dismiss the appeal, is concerned since both the orders are under challenge and when the first order is without jurisdiction, the appellate order dismissing the appeal, may be on any ground, can also not be sustained.

**17.** In the result, the writ petition is allowed. The impugned orders are set aside, however, granting liberty to the respondents to initiate fresh proceedings if so required as per law.

No orders as to costs.

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

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\*In favour of assessee.