
[2024] 163 taxmann.com 132 (Andhra Pradesh)[22-04-2024]

GST : Where assessee had not filed reply to SCN issued but had filed writ petition when order of cancellation of registration was passed and falsely submitted that reply to SCN was filed but same was not considered, assessee had tried to abuse process of Court and, thus, writ petition of assessee was to be dismissed and a cost of Rs. 50 thousand was to be imposed on assessee

■ ■ ■

[2024] 163 taxmann.com 132 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Jadapalli Munirathnam Royal

v.

Assistant Commissioner (ST)*

RAVI NATH TILHARI AND SMT. KIRANMAYEE MANDAVA, JJ.

WRIT PETITION NO. 31225 OF 2023

APRIL 22, 2024

Registration - Cancellation of - Abuse of process of Court - Registration of assessee was cancelled - Remedy of appeal was available but assessee approached instant Court by filing writ petition on ground that there was violation of principles of natural justice inasmuch as assessee filed reply to show cause notice but same was not considered - Assessee later submitted that reply was not filed to show cause notice - HELD : Assessee had not approached instant court with clean hands - Assessee had unnecessarily engaged in such a matter which deserved dismissal on first hearing - Writ petition was to be dismissed imposing a cost of Rs. 50 thousand on assessee [Section 29 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 21, 22 and 23] [In favour of revenue]

S. Suri Babu *for the Petitioner.* **Shreyas Reddy**, *Ld. Govt. Pleader for Commercial Tax for the Respondent.*

JUDGMENT

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

2. By means of this writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 03.04.2023 for cancellation of the petitioner's registration of the GST, as also the order dated 16.06.2023 by which the petitioner's application for revocation of the cancellation order was also rejected.

3. Against the order of cancellation the remedy of appeal is also provided under the statute. However, we entertained the writ petition in view of the submission advanced on behalf of the petitioner that there was violation of the principles of natural justice, inasmuch as the petitioner filed the reply dated 02.04.2023 to the show cause notice dated 02.03.2023 issued to the petitioner but the same was not considered while passing the impugned order dated 03.04.2023. A specific averment to that effect was made in Para 3 of the affidavit in support of the writ petition.

4. The impugned order also mentioned that the petitioner filed the reply dated 02.04.2023 in the very first sentence, though in the later part it was mentioned that the reply was not filed.

5. On 05.12.2023, the following order was passed:-

"The petitioner's GST registration was cancelled by an order dated 03.04.2023. Previously, show-cause notice dated 02.03.2023 was issued stating the reasons for the proposed order.

2. Learned counsel for the petitioner submits that the petitioner filed reply on 02.04.2023 but the same has not been considered while passing the order dated 03.04.2023.

3. The order of cancellation in the first sentence mentioned about the reply dated 02.04.2023 but in next sentence it is mentioned that the petitioner did not file any reply.

4. Learned counsel for the petitioner further submits that an application for revocation of cancellation was filed which has also been rejected *vide* order dated 16.06.2023.

5. Learned Government Pleader shall obtain instructions with respect to the original order of cancellation on the aspect as noted above.

6. Post on 12.12.2023."

6. On another date *i.e.* on 09.01.2024 based on the instructions, it was submitted by the learned Assistant Government Pleader that the petitioner did not file any reply against the show cause notice. On that date also, it was argued by the learned counsel for the petitioner based on Para 3 of the affidavit in support of the writ petition that, the petitioner filed the reply dated 02.04.2023, but the same was not considered.

7. As the impugned order in the later part said that the reply was not filed, the Court passed the order dated 09.01.2024, *inter alia*, directing the learned Government Pleader to produce the original record.

8. The petitioner was also directed to file additional affidavit bringing on record the copy of the petitioner's reply dated 02.04.2023 in support of the averment made in Para 3 of the affidavit, which was not annexed with the writ petition.

9. The order dated 09.01.2024 is reproduced as under:-

"The challenge in this petition is to the order of cancellation of the registration passed by respondent No.1 in Form GST REG-19 *vide* Ref.No.ZA3704230022335 dated 03.04.2023 of the petitioner mainly on the ground that the petitioner's reply dated 02.04.2023 in respect to the show-cause notice dated 02.03.2023 was not considered.

2. In the order of cancellation, it is mentioned that no reply to the show cause notice was submitted though in the first sentence the date of reply was mentioned as 02.04.2023.

3. Sri A.V.Badra Naga Seshayya, learned Assistant Government Pleader appearing for respondents based on the written statement received from the Assistant Commissioner (ST) FAC, Nellore-II circle, submits that the show cause notice was issued on 02.03.2023. Subsequently, opportunity for personal hearing was given to the petitioner to appear on or before 30.03.2023 but the petitioner did not file any reply against the show cause notice.

4. Learned counsel for the petitioner submits that the petitioner filed reply dated 02.04.2023 and the averments to that effect is in para-3 of the affidavit filed in support of this petition.

5. From the aforesaid, we find that in para-3, the petitioner has specifically mentioned that he filed reply dated 02.04.2023. The impugned order also mentioned the petitioner's reply given on 02.04.2023. But, as per instructions, the petitioner did not file any reply. The petitioner has also not annexed any copy of his reply dated 02.04.2023 with the affidavit.

6. Let the original record be produced before this Court on the next date.

7. Let the petitioner also file an additional affidavit bringing on record copy of his reply dated 02.04.2023 in support of the averment made in para-3 of the affidavit.

8. Post the matter on 14.02.2024."

10. On 14.02.2024, two weeks further time was granted, as requested, to file additional affidavit.

11. On 13.03.2024, the learned Government Pleader produced the record and submitted that there was no reply of the petitioner said to be dated 02.04.2023, on record.

12. The petitioner did not file copy of the said reply dated 02.04.2023 by additional affidavit, inspite of many opportunities. The matter was however posted for 20.03.2024.

13. The petitioner then, filed the additional affidavit *vide* I.A.No.1 of 2024, dated 19.03.2024.

14. The petitioner has annexed P1 (at Page 9) of the additional affidavit the alleged reply which however does not bear any date.

15. Learned counsel for the petitioner today submits that the reply was not filed, and though the reply was prepared but it remained in the records of the petitioner and was not uploaded as well. He has referred to Para 4 of the additional affidavit.

16. Para 4 of the additional affidavit reads as under:-

"4. The petitioner submits that filing of the returns under the CGST, 2017, was being handled by Sri Mahesh, Tax Practitioner. The petitioner was not aware of non-filing of the returns consecutively for a period of six months from February, 2023. As there was no business operations from the said month, the petitioner was also under the bonafied impression that no return need be filed and therefore the said issue had not been taken note of. When the show cause notice proposing to cancel the Registration Certificate had been issued, it was brought to the notice of the petitioner and a reply was drafted and was placed in the file. A copy of the same is herewith enclosed as Annexure - P1. As all the notices and replies are to be sent by mail and as the said reply was available in the file, the petitioner was under the bonafied impression that the said reply had been sent by mail. However, it was subsequently verified and noticed that said reply had not either been sent physically or by mail. In view of the same, the petitioner hereby submits an unconditional apologies to this Hon'ble Court for the mis-statement and anomaly for making the above submission in the Affidavit filed in support of the Writ Petition. As the above said reply was available in the file, the petitioner was under the bonafied impression that it has been drafted and filed. Hence, the petitioner submits that the mistake is not intentional and the petitioner tender unconditional apologies to this Hon'ble Court."

17. Thus, the petitioner did not file the reply to the show cause notice. But, the writ petition was filed with an averment that the reply dated 02.04.2023 was filed and was not considered, and based thereon the plea of violation of the principles of natural justice was raised to challenge the impugned order.

18. Learned Government Pleader submits that so far as the mention of filing the reply dated 02.04.2023 by the petitioner in the impugned order is concerned, the same resulted because it is automatically generated by the system, in every order, on the expiry of the period granted to file reply, taking the date of the show cause notice and the period granted for filing the reply. He submits that the relevant is the later part in the order which mentioned that the reply was not filed.

19. Be it as it may, as regards the submission of the learned Government Pleader, but we are not satisfied with the oral explanation offered by learned Government Pleader. In the order there should be no contradictions *i.e.* to mention firstly that, the reply was filed and secondly that the reply was not filed. Either it is filed or it is not filed. The order must reflect the true position regarding filing of the reply, whether the reply was filed or was not filed. Even if it is a case of auto generation, as submitted by Government Pleader, this aspect requires to be looked into by the concerned authority, so that in future, any such inconsistency in the order does not arise and the correct factual position finds mention and is so reflected in the order.

20. The petitioner ought to have been diligent and careful in making pleadings while filing the writ petition. When only the draft was prepared which as submitted remained kept in the petitioner's record, the affidavit should not have been filed to the effect that the reply was filed. The petitioner should have verified before filing writ petition if the alleged draft reply was sent, through mail or otherwise or not.

21. Though, we are not observing finally, but it appears to us *prima facie*, that taking the advantage of the mention in the impugned order that the reply was filed on 02.04.2023, the petitioner took the plea in his affidavit that the reply was filed. If the reply had been filed, a copy thereof should have been annexed with the writ affidavit, which was not done. It is only after our order dated 09.01.2024 followed by few more orders directing the petitioner to file the additional affidavit brining on record copy of the reply, the additional affidavit was filed stating *inter alia* that the reply was not filed. Even with the additional affidavit, the alleged draft reply which has been annexed, does not bear any date. We cannot and must not condone such acts.

22. The petitioner has not approached this Court with clean hands. The petitioner has tried to abuse the process of the writ Court. He has unnecessarily engaged this Court in such a matter which deserved dismissal on the first hearing, the petitioner having failed to file reply to the show cause notice and thus not having availed the opportunity of hearing granted, could not be heard complaining violation of the principles of natural justice. He has encroached upon the public time on various dates, which could have been utilized in some other cases.

23. We dismiss the writ petition imposing a cost of Rs.50,000/- (Rupees Fifty Thousand only) on the petitioner.

24. Let the costs be deposited with the Secretary, Andhra Pradesh High Court Legal Services Committee in the High Court premises, Amaravati, within two weeks, failing which, the Registrar of this Court shall proceed to initiate the proceedings to recover the same, in accordance with law.

25. We consider it appropriate to direct the respondent No.2 to look into the aspect of the matter as in Paras 18 & 19 (*supra*) and to take appropriate necessary remedial steps to resolve such auto generation issue. If the competent authority to address such an issue is other than the respondent No.2, the same shall be brought to the notice of such other authority by respondent No.2 along with copy of this order to do the needful. Such other authority is also directed hereby to do the needful.

26. A copy of this order shall be sent to respondent No.2 for compliance.

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

ANURAG

*In favour of revenue.