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[2023] 155 taxmann.com 504 (Andhra Pradesh)[29-09-2023]

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**GST : Where show cause notice was issued to assessee-company which broadly alleged fraud, wilful misstatement, or suppression of facts without specifying any violation that was against principles of natural justice, mere fact that registration of assessee-company and its parent company was co-existing at same premises, same would not substantiate any wrongdoing as alleged**

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[2023] 155 taxmann.com 504 (Andhra Pradesh)

**HIGH COURT OF ANDHRA PRADESH**

**Sakthi Steel Industries India (P.) Ltd.**

**v.**

**Appellate Additional Commissioner\***

U. DURGA PRASAD RAO AND SMT. VENKATA JYOTHIRMAI PRATAPA, JJ.

WRIT PETITION NO.17500 OF 2023

SEPTEMBER 29, 2023

**Registration - Cancellation of Registration - Wilful Misstatement - Assessee was a group company of Sakthi Ferroy Alloys - It obtained GST registration in Andhra Pradesh to maintain proper supply chain and operational efficiency - A show cause notice was issued for cancellation of registration alleging that registration was obtained by means of fraud, wilful misstatement or suppression of facts - Ultimately order cancelling registration was passed alleging that parent company and assessee-company were doing business in same premises which was not permissible and that, registered business was not genuine - HELD : Show cause notice issued to petitioner was vague and dubious and did not provide sufficient details regarding alleged fraud, wilful misstatement, or suppression of facts - Therefore, said notice had violated principles of natural justice - GST authorities had not verified records to know whether petitioner was involved in issuing and obtaining fake invoices and doing fake business to avoid tax - Mere fact that taxpayer and its parent company had obtained registration at same premises was not sufficient to conclude that taxpayer obtained registration by committing fraud or wilful misstatement or suppression of facts - Order cancelling GST registration was to be set aside with directions to restore registration [Section 29 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 7, 10 and 12] [In favour of assessee]**

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## **ORDER**

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**U. Durga Prasad Rao, J.** - The petitioner seeks for a writ of mandamus declaring the order in Appeal No. AD3704230182873 dated 7-7-2023 passed by 1<sup>st</sup> respondent confirming the order dated 20-4-2023 passed by the 2<sup>nd</sup> respondent cancelling the GSTN registration of the petitioner as illegal, arbitrary and to *set aside* the same and pass such other orders.

2. The petitioner's case succinctly is thus:

- (a) M/s. Sakthi Steel Industries India Private Limited, the writ petitioner herein, is engaged in the business of trading the TMT bars, billets and ferrous scrap importing the iron scrap from foreign countries. The company was incorporated at Chennai and obtained registration number there. The petitioner is a group company of M/s. Sakthi Ferroy Alloys (India) Private Limited (*i.e.*, parent

company) having its manufacturing plant at Vasnadu Gollapalle Village, Kuppam Mandal, Chittoor. This parent company manufactures the TMT bars and billets. The petitioner purchases TMT bars and billets from its parent company and sells to various States like Tamilnadu, Karnataka, Andhra Pradesh and Kerala. Whereas the petitioner company procures the scrap iron via imports from various countries like Europe, USA, Hongkong, Malaysia, Singapore, South Africa, West Africa etc. besides making local purchases in Chennai from M/s. Hyundai and its ancillary suppliers and the petitioner sells to various purchasers and its majority of scrap sales are made to its parent company at Kuppam.

- (b) The petitioner's further case is that it has obtained GST registration in A.P. to maintain proper supply chain of M/s. Sakthi Steel Industries India Private Limited. Further, to have better control and operational efficiency, the petitioner obtained on lease Ac.2.71 cents of vacant land with built up area situated in S.No.15/3 of Vasnadu Gollapalle Village, Kuppam Mandal belonging to its parent company under Lease Agreement dated 26-11-2022. In a portion of the said premises, the parent company also operates. The petitioner obtained GST registration No. 37AAVCS0110M1Z2 on 6-1-2023.
- (c) The further case of petitioner is that the Deputy Assistant Commissioner (ST)-II, Palamaner circle visited the business place of the petitioner on 16-3-2023 and submitted his remarks, basing on which the 2<sup>nd</sup> respondent issued show cause notice dated 20-3-2023 with a vague allegation to the effect "In case registration has been obtained by means of fraud, wilful misstatement or suppression of facts", the petitioner is directed to furnish reply within seven days". The petitioner's registration was suspended w.e.f. 20-3-2023.
- (d) The petitioner submitted reply on 24-3-2023 submitting that the petitioner never indulged in any fraud or bill trading or movement of goods without invoice and requested to revoke the suspension of GST registration. Subsequently the 2<sup>nd</sup> respondent passed impugned order dated 20-4-2023 cancelling the GST registration of the petitioner accepting the field inspection report of the Deputy Assistant Commissioner alleging that the parent company and petitioner's company doing the business in the same premises which is not maintainable; the registered business was not genuine; the taxpayer obtained registration without any independent place of business and falsely claimed to have conducted business at the premises of M/s. Sakthi Ferrous Alloys India Private Limited which is not suitable for conducting the taxpayer's stated business activities involving TMT bars and iron scrap; that the taxpayer may be engaged in bill trading without proper receipt and supply of goods.
- (e) Aggrieved by the said order, the petitioner preferred appeal before the Appellate Additional Commissioner (Sales Tax), Tirupati/1<sup>st</sup> respondent and said Authority dismissed the appeal by confirming the dismissal order passed by the 2<sup>nd</sup> respondent.

Hence, the writ petition.

3. Heard arguments of learned counsel for petitioner Sri N.Vijay, and learned Government Pleader for Commercial Taxes representing the respondents. Both the learned counsel reiterated their pleadings in their respective arguments.

4. The point for consideration is whether there are merits in the writ petition to allow.

5. *Point:* We have carefully gone through the impugned cancellation order and the appellate order. It must be said that in both the orders respondents 1 and 2 on the main observations that the parent and group company have obtained registration in respect of same premises, the leasehold premises of the petitioner is not conducive for the type of business it has undertaken i.e., sale of TMT bars and billets, since it is the case of the petitioner that all the goods supplied to its parent company were delivered as and when the goods were received from suppliers and the finished goods which are purchased from parent company are immediately shipped to the buyers and such is the business activity of the petitioner, there is no need to take huge land to an extent of Ac.2.71 cents when the same is not used for storing the goods, the Lease Deed dated 26-11-2022 is an unregistered document, have come to the conclusion that the petitioner obtained registration by playing fraud and involved in bill trading without actual movement of goods and genuine invoices. Accordingly, the cancellation order which was passed by the 2<sup>nd</sup> respondent was confirmed by the 1<sup>st</sup> respondent.

6. Be that as it may, section 29(2) of the A.P. Goods and Services Tax Act, 2017 specifies the grounds on which the GST registration of a taxpayer can be cancelled. It reads thus:

"29(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 returns for three consecutive tax periods; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; 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, wilful 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."

Hence, it has now to be seen whether any or all of the above grounds are satisfied by the respondents to cancel the registration of the petitioner in the instant case.

7. It should be noted that the show cause notice dated 20-3-2023, which is the precursor for cancellation of registration, only reveals that the registration of the petitioner is liable to be cancelled for the reason:

"In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts".

It is needless to emphasize that the show cause notice is as vague and dubious as it could be without mentioning the requisite particulars constituting the alleged fraud, wilful misstatement and suppression of facts. The elements of fraud, wilful misstatement and suppression of facts may be of varied types. Hence, the nature of fraud, wilful misstatement and suppression of facts have to be sufficiently described so as to give an opportunity to the taxpayer as otherwise, it will be difficult for him to submit an apt and appropriate reply/objections. The public authorities must know that the issuance of show cause notice has an avowed purpose of stating the formal grounds of accusation so as to invite proper explanation or reply from the person who is accused of charges. This process is based on equitable principle of natural justice that no man should be condemned unheard. Mere issuance of the show cause notice devoid of requisite particulars does not amount to proper compliance of the requirement. In that context, it should be mentioned that the show cause notice dated 20-3-2023 has flagrantly violated the principles of natural justice. Therefore, the very foundation for invocation of cancellation is feeble as it has no legal sanctity.

8. Be that as it may, though the show cause notice is vague, the petitioner seems to have submitted its reply dated 24-3-2023 with requisite particulars to the best of its ability. It clearly stated that to maintain proper supply chain and to have better control and operational efficiency on cost as well as convenience of operations, it applied for GST registration in A.P. by obtaining lease of part of the property owned by its parent company in Kuppam, Andhra Pradesh. The petitioner mentioned that all the TMT purchases of the petitioner are from its parent company and sales were spread over to different States. Further, the majority of the scrap iron which is procured by the petitioner from different countries is sold to its parent company. Most importantly, the petitioner avouched that the complete details of the purchases and sales can be verified at any point of time if the need arises. The petitioner further avouched that never ever, the petitioner committed any wilful fraud, bill trading or movement of goods without proper invoices. On such submission, the petitioner sought for revocation of the suspension of its GST registration.

9. Then the impugned registration cancellation order dated 20-4-2023 reveals that the 2<sup>nd</sup> respondent having reproduced the above reply dated 24-3-2023, made the following observation:

"Examined the reply filed by the Taxable person with reference to the documents available on record in GST Portal. The Taxable person has given the address of the present business place *i.e.*, M/s Sakthi Steel Industries India Pvt. Ltd. bearing GTSTIN No. 37AAVCS0110M1Z2, Sy.No.15/3, Ground, Sakthi Ferro Alloys India Private Limited, Factory, Gollapalli village, Vasnadugolla Palle, Nadimur Gramapanchayath, Chittoor 517 425. In the same Sy.No. *i.e.*, 15/1 ABC 16, 17/1AB 2A, VASANADU GOLLAPALLEE, KUPPAM MANDAL, Chittoor, 517425 there was also another Registration bearing GSTIN No. 37AAJCS3251K1Z2 has taken registration for doing business as under which is under the territorial jurisdiction of Special circle-2.

The present Registration which was issued under the name and style of Ms. Sakthi Steel Industries Private Limited is also doing the same business in the same premises of M/s Sakthi Ferro Alloys India Private Limited (GSTIN No. 37AAJCS3251K1Z2) which is not maintainable. Further the Field Visit Officer submitted his report stating that "Upon verification of the place of Business, it was noticed that the registered business was not genuine. The Tax Payer obtained Registration without an independent place of business and falsely claimed to be conducting business at the premises of M/s. Sakthi Ferro Alloys Pvt. Ltd, which is not suitable for conducting the Tax Payer's stated business activities involving TMT bars and Iron Scrap. It is suspected that the tax Payer may be engaged in bill trading without proper receipt and supply of goods. Finally recommended that the firm is not genuine and recommended for suomoto cancelation."

In view of the above and as per Field Visit Report of the Dy. Assistant Commissioner (ST-II), Palamaner Circle, Palamaner, it is a fact that there were Two Registrations for the same commodity existing in the same place of business reveals that the place of business now shown is not suited for the present business activities and hence recommended for cancellation."

**10.** Thus, the observations of the 2<sup>nd</sup> respondent would reveal that mainly basing on the fact that the registration of the petitioner and its parent company emanate from same premises, the 2<sup>nd</sup> respondent, without verifying the records to know whether the petitioner involved in issuing and obtaining the fake invoices and doing fake business to avoid tax, came to the conclusion that the place of business shown by the petitioner is not suited for the present business activities and hence, recommended for cancelation. We are unable to comprehend, even if the place of business of the petitioner for argument sake is not conducive for its business, how the said fact can be treated as sufficient to conclude that the petitioner obtained registration by committing fraud or wilful misstatement or suppression of facts. It should not be forgotten that whether the petitioner is involved in bill trading without proper receipt and supply of goods can be determined only after thorough examination of relevant records such as account books, e waybills, transportation particulars, toll plaza particulars etc. However, in spite of the petitioner's submission that the complete details of purchases and sales can be verified at any point of time, the 2<sup>nd</sup> respondent without resorting to such logical and legal exercise, simply carried away by the recommendations of the Inspecting Authority *i.e.*, Deputy Assistant Commissioner who on a conjuncture suspected that the taxpayer may be engaged in bill trading without proper receipt and supply of goods, for which there is no proper basis. Therefore, the impugned registration cancellation order is not sustainable in the eye of law.

**11.** Then we have perused the appellate order passed by the 1<sup>st</sup> respondent. Needless to emphasize that the said authority also committed the same mistake in confirming the order of the 2<sup>nd</sup> respondent without considering a logical question as to how the mere commonality of the location of the petitioner and parent company itself is sufficient to hold that the petitioner has committed fraud in obtaining registration and involved in bill trading, without the scrutiny of the relevant records. Therefore, the appellate order is also liable to be set aside.

**12.** Accordingly, the Writ Petition is allowed and the cancellation order dated 20-4-2023 passed by 2<sup>nd</sup> respondent and the appellate order dated 7-7-2023 passed by 1<sup>st</sup> respondent are *set aside* with a direction to the respondent authorities to restore the GST registration of the petitioner within one (1) week from the date of receipt of a copy of this order. This order, however, will not preclude the authorities to issue proper show cause notice afresh with requisite particulars inviting explanation of petitioner and conduct enquiry by following due process of law and pass an appropriate order in accordance with the governing law and rules. No costs.

As a sequel, interlocutory applications, pending if any shall stand closed.

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\*In favour of assessee.