

GAHC010006982024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/223/2024

PURBANCHAL ENTERPRISE
REPRESENTED BY ONE OF ITS PARTNER, MANIK PHUKAN, AGED ABOUT
56 YEARS SON OF RATNESWAR PHUKAN, P.O. MORAN, SUKANPUKHURI,
SIVASAGAR, ASSAM- 785669

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA
DEPARTMENT OF FINANCE

2:THE PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICE
TAX
GST BHAWAN
KEDAR ROAD
GUWAHATI- 781001
ASSAM

3:THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
GUWAHATI
ASSAM

4:THE SUPERINTENDENT
CENTRAL GOODS AND SERVICES TAX
SIBSAGAR ZONE
ASSAM

Advocate for the Petitioner : MR S K AGARWAL

Advocate for the Respondent : SC, GST

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 01-02-2024

Mr. S.K. Agarwal, learned counsel for the petitioner and Mr. B.N. Gogoi, learned Standing Counsel, CGST for all the respondents.

2. It is the case of the petitioner that it is a partnership firm having its place of business at Moran, District – Sivasagar and it carries out business of works contract. For the purpose of carrying out its business, the petitioner got itself registered under the Goods and Services Tax [GST] Act, 2017 with Registration no. 18AAUFP7080R1ZZ.

2.1. The petitioner was issued a show cause notice on 26.11.2021 asking him to show cause as to why the registration certificate issued under the Goods and Services Tax [GST] Act, 2017 in his favour should not be cancelled due to non-furnishing of returns in compliance of the provisions of Section 29[2][c] of the GST Act, 2017 for a continuous period of 6 [six] or more months. The petitioner was thereby, directed to furnish his reply within a period of 7 [seven] working days from the date of service of the said show cause notice and was also asked to appear in person before the authority issuing the show cause notice on 30.11.2021. Though the petitioner did not submit any reply in response to the show cause notice dated 26.11.2021, as submitted by the learned counsel for the petitioner, the authority issuing the show cause notice cancelled the GST registration of the petitioner by an order dated 15.12.2021 in Form GST REG-19 w.e.f. 15.12.2021, after recording that he had examined the petitioner's reply dated 08.12.2021 submitted response to the show cause notice dated 26.11.2021.

3. Section 39[1] of the GST Act, 2017 *inter alia* requires a registered person to furnish a return for every calendar month or part thereof, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed.

4. Mr. Agarwal, learned counsel appearing for the petitioner has submitted that during the concerned period, the petitioner could not submit the returns required to be submitted under Section 39[1] of the CGST Act for a period of more than 6 [six] months due to reasons beyond his control, more particularly, due to onset and continuance of Covid-19 Pandemic. It has been submitted that due to continuance of Covid-19 Pandemic for a prolonged period, the business of the petitioner was badly affected and the petitioner had suffered a lot financially. It was due to such reasons, the petitioner defaulted in complying with the provisions of the GST Act, thereby, failed to file the statutory returns within due dates, resulting in defaults for a period of more than 6 [six] months. It has been submitted that after improvement of the Covid-19 situation and with gradual revival of business, the petitioner had filed its returns upto December, 2022 as allowed by the GST portal. After filing of the returns, the petitioner tried to file an application for revocation of his cancellation of GST registration. But the same could not be filed as the time limit prescribed for filing revocation application for revocation of cancellation, had already elapsed. Thereafter, the petitioner tried to approach the appellate authority to file an appeal under Section 107 of the GST Act, 2017. As the period of limitation to file an appeal under Section 107 of the CGST Act had already elapsed, the appeal could not be filed. With such projections, the petitioner has approached this court by the present petition.

5. As per Section 29[2][c], an officer, duly empowered, may cancel the GST registration of a person from such date, including any retrospective date, as he deems fit, where any registered person has not furnished returns for a continuous period of 6 [six] months. Rule 22 of the CGST Rules, 2017 has laid down the procedure for cancellation of the registration. For ready reference, Rule 22 of the CGST Rules, 2017 is quoted herein below in its entirety :-

Rule 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 Rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule [1], or under sub-rule [2A] of Rule 21A 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] or in response to the notice issued under sub-rule (2A) of Rule 21A is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20 : Provided that where the person instead of replying to the notice served under sub-rule [1] for contravention of the provisions contained in Clause [b] or Clause [c] of sub-section [2] of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, 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.

6. It is discernible from a reading of the proviso to sub-rule [4] of Rule 22 of the CGST Rules 2017 that if a person who has been served with a show cause notice under Section 29[2][c] of the CGST Act, 2017, is ready and willing to furnish all the pending returns and to make full payment of the tax itself along with applicable interest and late fee, the officer, duly empowered, can drop the proceedings and pass an order in the prescribed Form i.e. Form GST REG-20.

7. Mr. Agarwal, learned counsel for the petitioner has submitted that this Court in a

number of writ petitions, preferred by similarly situated persons, has passed orders for restoration of GST registration. In support of his submissions, he has referred to the orders passed in a number writ petitions, W.P.[C] no. 6175/2022, W.P.[C] no. 576/2023, W.P.[C] no. 6930/2023, W.P.[C] no. 6366/2023, etc. and has prayed for similar order.

8. Mr. Gogoi, learned Standing Counsel, CGST has not disputed the fact of passing orders by the benches of this Court in respect of similarly situated persons, whose GST registrations were cancelled on similar grounds.

9. The petitioner has stated that it carries out business works contracts. Under the GST regime, the petitioner was required to pay the necessary dues under the CGST Act or the SGST Act, as the case may be, or both. These statutory dues are required to be paid by all entities, who are registered under the GST regime. Such payments of statutory dues contribute towards the revenue collection by the Union. If the petitioner is not included within the GST regime, then any statutory dues that may be required to be deposited by the petitioner, will not be deposited and such a situation is in the interest of the revenue. Therefore, in order that the petitioner is required to comply with his statutory obligations of payment of taxes under the GST regime, it would be necessary for the departmental authorities to reconsider the prayer of the petitioner for revocation of his cancellation of GST registration.

10. Having regard to the fact that the GST registration of the petitioner has been canceled under Section 29[2][c] of the CGST Act, 2017 for the reason that the petitioner did not submit returns for a period of 6 [six] months and more; the provisions contained in the proviso to sub-rule [4] of Rule 22 of the CGST Rules, 2017 and the orders passed by the coordinate benches of this Court as well as by this Court in similar matters whereby the matters have been disposed of with a direction to the respondent authority to revoke the cancellation of registration upon due payment of all statutory dues payable by the petitioners, this Court is of the considered view that no purpose will be served by keeping this writ petition pending and the present writ petition can be disposed of in similar terms, as had been passed in similar writ petitions

11. Accordingly, the impugned order dated 15.12.2021 is hereby interfered with and set aside. The petitioner is directed to approach the concerned authority within a period of 1 [one] month from today, seeking revocation of cancellation of restoration of his GST registration. On such approach by the petitioner, the concerned authority will intimate the petitioner the total outstanding statutory dues, if any, standing in the name of the petitioner till the date of cancellation of registration and any other outstanding dues under the GST required to be paid by the petitioner. Upon such intimation, the same shall be deposited within the time limit mentioned by the concern authority and upon such payment of the statutory dues under the GST by the petitioner, the concerned authority will pass appropriate order and revoke the cancellation of registration, by restoring the GST registration of the petitioner.

12. With the observations made and directions given above, the writ petition is disposed of. No cost.

JUDGE

Comparing Assistant