

**IN THE HIGH COURT OF KERALA AT ERNAKULAM****PRESENT****THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH****THURSDAY, THE 5TH DAY OF OCTOBER 2023 / 13TH ASWINA, 1945****WP (C) NO. 29033 OF 2023****PETITIONER:**

M/S. STEEL INDIA
IX/205, MAMPULLY, KANDASSANKADAVU, THRISSUR ,
REPRESENTED BY ITS MANAGING PARTNER, BIJU CHETTUKULAM
SURENDRAN., PIN - 680613

BY ADVS.
HARISANKAR V. MENON
MEERA V.MENON
R.SREEJITH
K.KRISHNA
PARVATHY MENON

RESPONDENTS:

- 1 THE STATE TAX OFFICER
TAX PAYER SERVICES CIRCLE, STATE GOODS & SERVICES TAX
DEPARTMENT, NATTIKA, THRISSUR, PIN - 680004
- 2 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001

OTHER PRESENT:

JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 27.09.2023,, THE COURT ON 05.10.2023
DELIVERED THE FOLLOWING:



DINESH KUMAR SINGH, J.

W.P.(C) No. 29033 of 2023

Dated : 5th October 2023

JUDGMENT

The present Writ Petition has been filed by the petitioner seeking quashing of Exts.P4 and P5 orders whereby the petitioner's GST registration in exercising the powers conferred under Section 29(2)(e) read with Rule 21(a) of the CGST/SGST Act, 2017 and Rules made thereunder has been cancelled with effect from 1st July 2017 vide communication dated 24th June 2023 and the petitioner has been directed to furnish final return in FORM GSTR-10 within a period of three months and also directed to furnish all pending returns.

2. The petitioner is a partnership firm said to be engaged in the trading of iron and steel items. The petitioner was a registered dealer under the provisions of Kerala Value Added Tax Act, 2003 till 30.6.2017 and, thereafter, under the provisions of CGST/SGST Acts. The petitioner claimed that he had started his business on the rented premises as mentioned



in the memo of the parties. It is stated that the petitioner had to stop the business activities temporarily with effect from 1st October 2022 for unforeseen reasons. However, he continued to file returns under the GST regime. The petitioner was issued a show cause notice on 13.06.2023. The show cause notice would reveal that the registration of the petitioner was sought to be cancelled for the following reasons:

- i) Person does not conduct any business from the declared place of business.
- ii) Person issues invoice or bill without supply of goods or services.

3. The petitioner submitted a reply to this show cause notice on 21st June 2023 stating that the business premises of the petitioner was temporarily closed and that he would resume business activities once the conditions improve. Despite the aforesaid reply, cancelling the registration granted to the petitioner, Exts.P4 and P5 have been issued.

4. Sri Harisankar V Menon, learned counsel for the petitioner submits that the impugned orders, Exts.P4 and P5, issued by the first respondent are illegal, arbitrary and unjustified and liable to be quashed. Learned counsel for the petitioner submits that



he does not dispute the power under Section 29(2)(e) of the GST Act read with Rule 21(a) of the GST Rules regarding cancellation of registration in the circumstances mentioned therein. However, the show cause notice issued to the petitioner does not mention a statement given by the owner of the building where the petitioner said to have the office regarding business activities being carried out by the petitioner from the said premises. Learned counsel submits that the petitioner has defaulted in making payment of rent for a few months, but that does not mean that the petitioner has been ousted from the said premises. Learned counsel for the petitioner submits that the respondent has placed reliance on the statement of a third party, therefore, the petitioners should have been afforded an opportunity to examine the said person who is the owner of the building. In support of the said submission, the petitioner has placed reliance on the judgment of the Supreme Court in the case of *C.K.Sunny v Sales Tax Officer*¹.

5. Learned counsel for the petitioner also submits that the petitioner has remedy of appeal against the impugned orders,

¹ (2005) 139 STC 186



however, as there is violation of principles of natural justice, the petitioner has approached this Court with this Writ Petition.

6. Learned Government Pleader has opposed the Writ Petition and submitted that the provisions of Section 29(2) and Rule 21(a) do not provide for cross-examination of the person whose statement has been taken into consideration regarding business activity of a dealer from the premises given as address in the GST registration. It was for the petitioner to prove that he was carrying out his business activities from the said premises. The petitioner did not produce any evidence in support of his contention and, on the basis of the evidence and enquiries made, it was found that no business activity was carried out by the petitioner from the office address mentioned in the registration. Therefore, considering the provision of Section 29(2), the registration has been cancelled.

7. It has been further submitted that the petitioner has a remedy of filing the appeal against the order impugned, and there has been no violation of the principles of natural justice as contended, this Court may dismiss the writ petition in limine.



8. I have considered the submissions.

9. Section 29 and Rule 21(a) GST Rules which are relevant

for the purpose of the present Writ Petition reads as under :

Section 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, 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. [Refer Note 1(c)]

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger,



equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

Rule 21. Registration to be cancelled in certain cases

The registration granted to a person is liable to be cancelled, if the said person, _

(a) does not conduct any business from the declared place of business;

10. On the basis of the materials and enquiries made, the State Tax Officer came to the conclusion that no business activity was carried out by the petitioner from the declared place of business. Upon such conclusion, the State Tax Officer would be well within the power to cancel the registration after affording an opportunity of being heard to the dealer.

11. In the present case, the petitioner was afforded an opportunity to support his case. However, he did not produce



convincing proof that he was, in fact carrying on any business from the declared place of his business. The Supreme Court in the case of *State of Kerala v K.T.Shaduli and Nallakandy Yusuff*² (paragraph-5) opined that the opportunity to prove the correctness or completeness of return would carry the right to examine the witnesses and the right to cross-examine the witnesses examined by the Sales Tax Officer.

12. Paragraph 5 of the said judgment is extracted hereunder:

The second part of the proviso lays down that where a return has been submitted, the assessee should be given a reasonable opportunity to prove the correctness or completeness of such return. This requirement obviously applies at the first stage of the enquiry before the Sales Tax Officer comes to the conclusion that the return submitted by the assessee is incorrect or incomplete so as to warrant the making of a best judgment assessment. The question is what is the content of this provision which imposes an obligation on the Sales Tax Officer to give and confers a corresponding right on the assessee to be afforded, a reasonable opportunity "to prove the correctness or completeness of such return". Now, obviously "to prove" means to establish the correctness or completeness of the return by any mode permissible under law. The usual mode recognised by law for proving a fact is by production of evidence and evidence includes oral evidence of witnesses. The opportunity to prove the correctness or completeness of the return would, therefore, necessarily carry with it the right to examine witnesses and that would include equally the right to cross-examine witnesses examined by the Sales Tax Officer. Here, in the present case, the return filed by the assessee appeared to the Sales Tax Officer to be incorrect or incomplete because certain sales appearing in the books of Hazi Usmankutty and other wholesale dealers were not shown in the books of account of the assessee. The Sales Tax Officer relied on the evidence furnished by the entries in the books of account of Hazi Usmankutty and other wholesale dealers for the purpose of coming to the conclusion that the return filed by the assessee

² (1977 Taxmann.com 48 (SC))



was incorrect or incomplete. Placed in these circumstances, the assessee could prove the correctness and completeness of his return only by showing that the entries in the books of account of Hazi Usmankutty and other wholesale dealers were false, bogus or manipulated and that the return submitted by the assessee should not be disbelieved on the basis of such entries, and this obviously, the assessee could not do, unless he was given an opportunity of cross-examining Hazi Usmankutty and other wholesale dealers with reference to their accounts. Since the evidentiary material procured from or produced by Hazi Usmankutty and other wholesale dealers was sought to be relied upon for showing that the return submitted by the assessee was incorrect and incomplete, the assessee was entitled to have Hazi Usmankutty, and other wholesale dealers summoned as witnesses for cross-examination. It can hardly be disputed that cross-examination is one of the most efficacious methods of establishing truth and exposing falsehood. Here, it was not disputed on behalf of the Revenue that the assessee in both cases applied to the Sales Tax Officer for summoning Hazi Usmankutty and other wholesale dealers for cross-examination, but his application was turned down by the Sales Tax Officer. This act of the Sales Tax Officer in refusing to summon Hazi Usmankutty and other wholesale dealers for cross-examination by the assessee clearly constituted infraction of the right conferred on the assessee by the second part of the proviso and that vitiated the orders of assessment made against the assessee.

13. In the present case, the landlord's statement was taken into account wherein the landlord stated that Room No.IX/205 is owned by him and was rented to the petitioner for conducting iron and steel business from 2012 to May 2017. However, after May 2017, no business activity was carried out from there, and the building was rented out to another person since 18th August 2017. The petitioner did not file any document for the change of his business place nor he



supported his claim that he was running the business from the given address by producing any documentary or oral evidence. The enquiry conducted by the competent officer is not a trial, but it is summary proceedings to find out whether the registered dealer is conducting any business from his declared place of business or not. After forming the prima facie opinion, the petitioner was put to notice and was given time to file a reply and produce evidence. No contrary evidence he could produce regarding him continuing business from the given address. The judgment relied on by the learned counsel for the petitioner in the case of *Commissioner of Income Tax v Vindhya Metal Corpn.*³ does not have any application to the facts of the case. There, the said observation was made in respect of the finalisation of return where the assessing officer placed reliance on the statement of some witnesses to reject the self-assessment order and it was not a case of cancellation or registration where no business is being conducted from the premises of the given address. I, therefore, do not find that there has been any infraction of principle of natural justice or

³ [1997]91 Taxman 192(SC)



the authority has acted arbitrarily as contended or otherwise. Therefore, the writ petition fails and hence, it is hereby dismissed.

However, if the petitioner is aggrieved by the aforesaid order, he may file an appeal under the relevant provisions of the GST Act and Rules thereunder. The appeal shall be considered expeditiously in accordance with law without being influenced by any of the observations made herein above.

**Sd/-DINESH KUMAR SINGH
JUDGE**

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APPENDIX OF WP(C) 29033/2023

PETITIONER EXHIBITS

- Exhibit P1 COPY OF DEED EXECUTED BETWEEN THE PETITIONER
AND BUILDING OWNER SRI. PAUL DTD. NIL
- Exhibit P2 COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST
RESPONDENT DTD. 13-06-2023
- Exhibit P3 COPY OF REPLY FILED BY THE PETITIONER BEFORE
THE 1ST RESPONDENT DTD. 21-06-2023
- Exhibit P4 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT
FOR THE YEAR 2023-24 DTD. 24-06-2023
- Exhibit P5 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT
DTD. 24-06-2023

RESPONDENT EXHIBITS

- EXHIBIT R1(a) EXHIBIT R1(a): A true copy of the statement
of building owner and its translation