

Court No. - 3

Case :- WRIT TAX No. - 68 of 2024

Petitioner :- M/S Govardhan Traders Thru.
Proprietor Ashish Kumar Yadav

Respondent :- State Of U.P. Thru. Addl. Chief
Secy. State Tax Lko. U.P. And 2 Others

Counsel for Petitioner :- Ashish Kumar
Singh, Harsh Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State Respondents.

2. This petition has been filed with the following main prayer:-

*"1. Issue a writ, order or direction in the nature of Certiorari quashing the impugned show cause notice dated 25.07.2022 annexed herewith as **ANNEXURE NO.1** and the impugned cancellation order dated 03.01.2023 annexed herewith as **ANNEXURE NO.2** in the interest of justice.*

2. Issue a writ, order or direction in the nature of mandamus commanding/directing the respondents to restore the GST registration of the petitioner and reactivate the GST registration number of the petitioner, in the interest of justice."

3. It has been submitted by learned counsel for the petitioner that this case is completely covered by the order passed by a Coordinate Bench of this Court in Writ Tax No. 19 of 2024, 'M/s Dharmadutt Brick Field, Bahraich Vs. State of U.P. and Others' decided on 02.02.2024..

4. We have gone through the order passed by the Coordinate Bench wherein the writ petitioner had challenged the show cause notice dated 23.02.2023 and order dated 17.03.2023 by which GST registration of the writ-petitioner had been

cancelled and the Court while considering the facts of the case had noted that the petitioner did not file GST returns and therefore, a show cause notice was issued to him directing the petitioner to furnish a reply to the notice within seven working days from the date of service of such notice. It was the case of the writ petitioner that he was not able to get the show cause notice issued by the respondent, and therefore, he could not submit his reply within the stipulated time, and since he has not been heard at the time of passing of the Cancellation Order, he is entitled for the benefit of the judgement of this Court in *Writ Tax No. 147 of 2022(Chandra Sarin Vs. Union of India)* dated 22.09.2022 where the Court had held that the impugned order does not assign any reason whatsoever for cancelling registration of the petitioner and that it has been passed only on the ground that the reply of the show cause notice has not been given. Non-submission of the reply to the show cause notice cannot be a ground for cancellation of registration.

5. The Court, therefore, allowed the writ petition set aside the Order of Cancellation dated 17.03.2023 permitted the petitioner to appear before the respondent and submit his reply to the show cause notice. The appropriate authority was to decide his case only thereafter.

6. In the case of the petitioner he has mentioned in paragraph 4 that the show cause notice dated 25.07.2022 had been served upon the petitioner, but he did not reply to the same because it was not in the prescribed format and there was no date and time on which the noticee was to appear for personal hearing. Since it was not in the prescribed format he did not choose to reply to the same.

7. In paragraph-9, the petitioner has mentioned that due to illness of his accountant he could not file returns on a regular basis. Moreover, the petitioner was suffering grave financial and trade difficulties apart from family problems.

8. This Court finds from a perusal of the show cause notice dated 25.07.2022 that it has

mentioned that no returns have been filed in a continuous period of six months and that a reply be filed within seven working days from the date of service of the notice, and that if no reply is filed or the assessee fails to appear for personal hearing on the appointed date and time, the case will be decided *ex parte* on the basis of available record and on merits.

9. The show cause notice was not indeed in the prescribed format as according to the petitioner no date and time was fixed for personal hearing. However, this Court also finds that there is an admission on the part of the petitioner that he has not filed any returns as mentioned in the show cause notice and that the show cause notice was indeed served on him, but he did not choose to reply the same within time prescribed.

10. In the Order of Cancellation dated 03.01.2023, mention has been made of some objections filed by the petitioner on 03.08.2022 in response to the show cause notice dated 25.07.2022. It is not clear, as to how, on the one hand it has been submitted by the petitioner that he has not filed any reply to the show cause notice because it was not in the prescribed format, then in the Cancellation of Registration Order dated 03.01.2023 objection/reply filed by the petitioner dated 03.08.2022 has been noted.

11. At this stage learned Standing Counsel for the State Respondents has referred to Section 30 of the Uttar Pradesh Goods and Services Tax Act, 2017, which provides as under:-

"30. Revocation of cancellation of registration- (1) *Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.*

1[Provided that such period may, no sufficient cause being shown, and for reasons to be recorded in writing, be extended,-

(a) by the Joint Commissioner (Executive), for a period not exceeding thirty days;

(b) by the Additional Commissioner Grade-1, for a further period not exceeding thirty days, beyond the period specified in clause (a).]

(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the Central Goods and Services Tax Act, 2017 shall be deemed to be a revocation of cancellation of registration under this Act."

12. Learned Standing Counsel for the State Respondents has pointed out that the petitioner can still apply for revocation of Cancellation of Registration Order and he shall be given an opportunity of hearing before his application for revocation is decided.

13. Learned counsel for the petitioner submits that the statutory remedy available under the Act is not a bar to entertaining of the writ petition as there is a gross-violation of the principle of natural justice.

14. We find from the pleadings on record that the petitioner has admitted that he has not filed GST returns because of illness of the Accountant and that the notice was served upon him, but he ignored the same and did not choose to submit any reply because it was not in the prescribed format. Therefore, the petitioner cannot be given the benefit of the arguments raised by him on the basis of violation of principles of natural justice.

16. The petitioner has statutory remedy of filing his application for revocation under Section 30 of the said Act before the appropriate authority.

17. The writ petition is ***dismissed.***

Order Date :- 2.4.2024
Darpan Sharma