IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.29835 of 2019(O&M)

Date of Decision:-04.12.2019

Hari Om Ispat Udyog through its Partner.

......Petitioner.

Versus

State of Punjab & Ors.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Jagmohan Bansal, Advocate for the Petitioner.

Mr. Pankaj Gupta, Additional Advocate General, Punjab.

Mr. Satya Pal Jain, Additional Solicitor General, assisted by Mr. Sunish Bindlish, Advocate.

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JASWANT SINGH, J.(ORAL)

1. Through instant Petition under Article 226 of the Constitution of India, Petitioner is seeking quashing of order dated 25.9.2019 (Annexure **P-8**) whereby Respondent No.3-Deputy Commissioner State Tax (Appeals), Ludhiana Division has upheld order of State Tax officer cancelling GST Registration Certificate (for short 'RC') of the Petitioner.

2. Few facts emerging from record are that the Petitioner since 1998 is engaged in the trading of iron and steel products. The Petitioner w.e.f. 1.7.2017 migrated to GST on the introduction of Punjab Goods and Services Tax Act, 2017 (for short 'PGST Act, 2017'). The State Tax Officer after issuing online notice dated 12.3.2019 vide order dated 26.3.2019 cancelled registration certificate of the Petitioner. It is apt to notice that RC was cancelled w.e.f. 1.7.2017.

3. Mr. Bansal, counsel for the Petitioner apart from other arguments, contended that at the relevant point of time Excise and Taxation Officer cum State Tax Officer (for short 'STO') was not proper officer under Section 29 of the PGST Act, 2017, thus cancellation order is bad in law on the ground of jurisdiction. The First Appellate Authority could not rectify jurisdictional error, thus impugned order passed by DCST(A) upholding order of STO deserves to be set aside.

4. Mr. Pankaj Gupta, Additional Advocate General, Punjab conceded that at the relevant point of time STO was not proper officer to pass order under Section 29 of the 2017 Act, however contended that i) by subsequent notification STO was authorised to pass order and ii) DCST (A) after noticing contention of Petitioner issued notice under Section 107 (11) of PGST Act, 2017 and granted opportunity of personal hearing, thus contention of the Petitioner is not sustainable.

5. After having scrutinized the rival arguments, we find that it is conceded fact that at the time of passing cancellation order dated 26.3.2019, State Tax Officer was not proper officer in terms of Section 29 of PGST Act, 2017. Subsequent authorization cannot cure jurisdictional error especially when notification is not having been issued with retrospective effect. Jurisdictional error could not be cured by First Appellate Authority by issuing notice under Section 107(11) of PGST Act, 2017. Thus, cancellation order and First Appellate order deserve to be quashed on the ground of jurisdictional defect.

6. In view of our above findings, present petition deserves to be allowed and accordingly **allowed**. Impugned order dated 25.9.2019 is hereby quashed. It is made clear that Respondents are at liberty to pass fresh order, as permitted by law.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

December 04, 2019
Vinay

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*