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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 13 of 2019

M/s RUDRA STEEL through Mr. Nikunj Gupta, aged 23 years, S/o Sunil Gupta, Address – Shiv Trading Company, Chatamuda Bypass road, District Raigarh, Chhattisgarh

---- Petitioner

Versus

1. Principal Commissioner CGST, Central GST Building, Dhamtari Road, Tikrapara, Raipur - 492001, Chhattisgarh
2. Commissioner, GST Department, North Block, Sector - 19, Atal Nagar, Chhattisgarh
3. Superintendent, GST Department, Range - II, Raigarh, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Siddharth Shukla, Advocate
For Respondent no.2	:	Mr. Siddharth Dubey, Dy. Govt. Advocate
For Respondents 1 & 3	:	Mr. Maneesh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

18.09.2020

1. The grievance of the petitioner in the present writ petition is the action on the part of the respondents in cancelling the registration of the petitioner under the GST law.
2. The facts necessary for disposal of the present writ petition in brief are that the petitioner is a dealer of iron and steel and had got itself registered under the provisions of GST Act on 21.11.2017. The last GST return that the petitioner had filed was in September, 2018.
3. The Consultant of the petitioner regarding compliance of the GST was

one Mr. P. K. Shrivastava, an advocate. The said advocate Shri P. K. Shrivastava was also the Consultant of another dealer of iron and steel namely M/s Omkar Steel. It so happened that M/s Omkar Steel requested the aforementioned Consultant to move an application for cancellation of their GST registration. However, due to an inadvertence on the part of the aforesaid Consultant, the request for cancellation of registration was made in the name of the petitioner instead of M/s Omkar Steel, whereas the petitioner had never instructed the Consultant to make any such application. The Consultant had forwarded the application for cancellation of registration on 15th October and on the very next date i.e. on 16th of October, 2018 itself, the cancellation application of the petitioner was accepted. Thereafter, the petitioner as well as their Consultant had approached the Department apprising them the inadvertent error that had cropped up on their part and the fact that the petitioner had never sought for cancellation of the registration and that the cancellation in fact was sought by another establishment namely Omkar Steel. In spite of the best efforts, the respondents refused to accept the contention of the petitioner and also refused to revoke the cancellation of registration. This has led to the filing of the present writ petition.

4. Learned counsel for the petitioner referred to Section 29 of the GST Act which empowers the proper officer, on his own motion or an application filed by the registered person, for drawing up a proceeding for cancellation of registration. Counsel for the petitioner further referred to Rule 22 of the Central GST Rules which deals with the cancellation of registration and which according to the petitioner has not been complied with or followed before the order dated 16.10.2018 was passed cancelling the registration of the petitioner. According to the petitioner, the respondent authorities were mandatorily required to issue notice before passing of the order of cancellation of the registration. Thus, the action on the part of the respondents is bad in law and deserves to be set aside. The petitioner prays that the respondents may be directed to revoke the cancellation of registration and to restore the registration of the petitioner.

5. Per contra, Shri Maneesh Sharma, counsel appearing for the Department, submitted that neither under the Central GST Act nor under the Central GST Rules have the authorities of the Department been given power to revoke the cancellation of registration in those cases where the cancellation has been effected on an application made by the applicants themselves. Referring to Section 30 of the GST Act counsel for the Department submitted that the law makers have empowered the proper officer for entertaining an application for revocation of the cancellation of registration. However, the said power is confined to only those cases where the cancellation of registration has been done exercising the powers on their motion by the Department. According to the Department, there is a deliberate exclusion of the category of those establishments whose registration has been cancelled at their request and therefore, the authorities do not have any power conferred upon them under the Act or the Rules. Therefore, the request made by the petitioner cannot be acceded to nor is it within their jurisdiction or competence.

6. The further contention of the learned counsel for the Department is that any modification done in the provisions of the GST law or even the amendment to the aforesaid provisions can only be done by the GST Council and the GST Council is not a party to the present writ petition.

7. Having heard the contentions put forth on either side and on perusal of the record, the admitted factual position is that the petitioner was a duly registered body under the GST law. On account of inadvertence on the part of the Consultant of the petitioner, the application for cancellation of registration was put up by the Consultant in the name of the petitioner whereas the said application was in fact intended on behalf of another establishment namely M/s Omkar Steel. Thereafter, the petitioner had approached the respondents for revocation of the cancellation of registration which for want of proper provisions under the Act as also under the Rules has not been acceded or accepted by the Department. For ready reference, the provisions of Sections 29 and 30 of the GST Act are being reproduced hereinunder:

> "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,—
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> (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
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> (b) there is any change in the constitution of the business; or
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> (c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.
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> [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 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.]

(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.

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.

(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 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 revocation of cancellation of registration under this Act.”

8. It would also be relevant at this juncture to refer to Rule 22(1) of the

Central GST Rules which lays down the procedure for cancellation of the registration and which for ready reference is reproduced hereinunder:

> "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 should not be cancelled."

9. The plain reading of Section 29(1) clearly depicts that there can be a cancellation of registration either on his own motion of the proper officer under the Act or on an application filed by the registered person himself. There are certain circumstances also which have been laid down under Section 29 of the Act which should be borne in mind by the proper officer before a decision is taken. That the procedure prescribed for the cancellation of registration is what is reflected in Rule 22(1) of the GST Rules which requires issuance of a notice to the concerned person whose registration has to be cancelled. Reading of Rule 22 (1) does not reflect as if the requirement for issuance of a notice would be only in case where the registration is sought to be cancelled at the motion of the Department.

10. The provisions of Rule 22 has to be given a broader and wider interpretation which would include both the categories where the cancellation of registration has been done either on the motion of the Department or an application by the registered person. The reason why this Court finds both the categories would be inclusive is for the reason that when we read Section 30 of the GST Act, there is a deliberate exclusion of a particular category, of those persons whose cancellation has been done at their request and such an exclusion does not finds place in Rule 22.

11. Another fact worth mentioning at this juncture is that M/s Omkar Steel who had in fact made the request for cancellation of registration but on account of the error on the part of the Consultant the application in the name of the petitioner was put up. The said Omkar Steel had subsequently moved an application making a request for cancellation of their registration and on their application, the Department had issued a notice under Rule 22(1) of the GST Rules. The petitioner has by way of a covering memo brought on record an order issued in this regard in favour of M/s Omkar Steel to establish that a notice to M/s Omkar Steel was issued before ordering for cancellation of their registration.

12. True it is that Section 30 of the Central GST Act speaks revocation of cancellation of registration of only those registered persons whose registration is cancelled by the proper officer on his own motion which means that in respect of the other category which is envisaged under Section 29 they cannot invoke the provisions of Section 30 for revocation of the cancellation of registration i.e. the category where the cancellation has been done on an application filed by the registered person himself.

13. In the absence of any power so conferred upon the authorities in respect of the category whose cancellation has been done on an application filed by the registered person themselves, it will be difficult for this Court for issuance of a specific writ to consider the application for revocation of the cancellation of registration. Though in the opinion of this Court, once under Section 30 of the Act a power has been given to the proper officer for revocation of the cancellation of registration in respect of those establishments where the cancellation has been done at the instance of the Department, hence there is no reason why the other category where the registration has been cancelled at the behest of the registered person also not get an opportunity for moving before the authorities seeking for a revocation of the cancellation of registration if they so want. Rather, it should be a case where the said provision should be read in a manner where such category of persons also would have the liberty of approaching the authorities seeking for revocation of the cancellation of registration.

14. Given the said reasons and keeping in mind the fact that the said Act being a new Act and is being implemented on trial and error basis and the fact that the Govt. has established a GST Council which is the key decision making body in respect of GST Law should consider this aspect and take an appropriate decision, as a decision in this regard would lay to rest many such similar situation that may arise or that has already arisen.

15. Therefore, this Court directs the petitioner to approach the GST Council in respect of their grievance and the stand taken by the Department. At the same time, this Court would also like to direct the respondents to consider referring the dispute of the petitioner to the GST Council for an appropriate clarification or guideline. The respondents also at the same time should consider the fact as to why the petitioner was not issued with a notice under Rule 22 of the Central

GST Rules whereas in the case of M/s Omkar Seel who had also moved an application and whose case a notice was issued before an order for cancellation of registration was passed.

16. With the aforesaid observation and direction, the writ petition stands disposed of. The respondents as also the GST Council is expected to take a decision at the earliest.

Sd/-
P. Sam Koshy
Judge

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