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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.21109 of 2021

Suresh Trading Corporation
Represented by its Proprietor
Mr.N.Kandasamy
No.91, Sathyamoorthy Road,
Ram Nagar, Coimbatore
Tamil Nadu - 641 009.

...Petitioner

-Vs.-

The Asst. Commissioner (Circle) of SGST
Ram Nagar Assessment Circle
Coimbatore - IITamil Nadu.

...Respondent

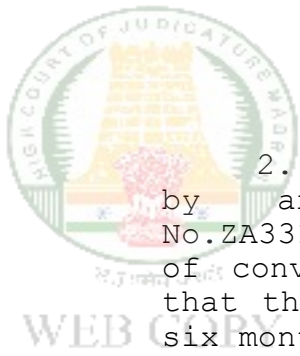
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for records relating to passing of impugned order bearing reference No.ZA331019110945P dated 30.10.2019 on the file of respondent herein and quash the same.

For Petitioner : Mr.K.Thyagarajan

For Respondent : Ms.Amirta Dinakaran
Government Advocate

O R D E R

Writ petitioner was registered under erstwhile 'Tamil Nadu General Sales Tax Act, 1959 (Act 1 of 1959)' [hereinafter 'TNGST Act' for the sake of convenience, clarity and brevity] and 'Central Sales Tax Act, 1959' [hereinafter 'CST Act' for the sake of convenience, clarity and brevity]. Thereafter, when Goods and Services Tax regime kicked in on and from 01.07.2017, the writ petitioner migrated to that regime in accordance with Section 139 of 'Tamil Nadu Goods and Services Tax Act, 2017 (Tamil Nadu Act 19 of 2017)' [hereinafter 'TN-GST Act' for the sake of convenience and clarity] and 'Central Goods and Services Tax Act, 2017' [hereinafter 'C-GST Act' for the sake of convenience and clarity]. In this backdrop, the writ petitioner by way of migration was issued a common Registration Certificate for TN-GST Act and C-GST Act and this common 'Registration Certificate' shall hereinafter be referred to as 'GST Certificate'. This GST Certificate is dated 02.08.2018.



2. The aforementioned GST Certificate was cancelled in and by an 'order dated 30.10.2019 bearing reference No.ZA331019110945P' [hereinafter 'impugned order' for the sake of convenience, clarity and brevity] primarily on the ground that the writ petitioner has failed to file monthly returns for six months.

3. To be noted, this cancellation is under Section 29 of TN-GST Act.

4. Mr.K.Thyagarajan, learned counsel for writ petitioner, draws the attention of this Court to 'Tamil Nadu Goods and Services Rules 2017' [hereinafter 'TN-GST Rules' for the sake of convenience and clarity] and more particularly, Rule 22(1) of TN-GST Rules which reads as follows:

'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.'

5. The aforementioned Rule makes it clear that it applies to cancellation of GST registration under Section 29 of TN-GST Act.

6. Adverting to a 'show cause notice' ['SCN'] dated 11.12.2018, learned counsel submits that though SCN refers to form GST REG-17, it is not in this format/template as it does not mention the date, month, year and time for personal hearing. To be noted, a scanned reproduction of template/format of form GST REG-17 is as follows:

FORM GST REG-17
[Sec rule 22(1)]

Reference No. : _____ Date : _____
Registration Number (GSTIN/UIN) : _____
(Name) : _____
(Address) : _____

Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons :-

1. _____
2. _____
3. _____

☐ You are hereby directed to furnish a reply to this notice within seven working days from the date of service of this notice.

☐ You are hereby directed to appear before the undersigned on DDMM/YYYY at HHMM. If you fail to furnish a reply within the stipulated time or fail to appear for personal hearing on the appointed date and time, the case will be decided on merits on the basis of available records and on merits.

Place : _____
Date : _____

Signature : _____
Name of the Officer : _____
Designation : _____
Jurisdiction : _____



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7. For further clarity, SCN dated 11.12.2018 issued by writ petitioner is as follows:

Form GST REG-17
(See Rule 22(1))

Reference Number: ZA3312182404750 Date: 11/12/2018

To
Respondent Number (GSTIN/Unique ID): 53AKQPK8974K12H
M. N. KUNITHY KANDASWAMY
6, BATHYANDORTY ROAD, RAM NAGAR, Coimbatore, Tamil Nadu, 641009

Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1. Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

If you fail to furnish a reply within the stipulated time or fail to appear for personal hearing on the appointed date and time, the matter will be decided ex parte on the basis of available records and on merits.

Place: RAM NAGAR (C)
Date: 11/12/2018

Signature Notified
Digitally signed by M. N. KUNITHY KANDASWAMY
SERVICES TAX & CUSTOMS
Date: 2018.12.11 11:13:51 +05'30'

M. N. KUNITHY KANDASWAMY
Assistant Commissioner (Circle)
SERVICES TAX & CUSTOMS
Date: 2018.12.11 11:13:51 +05'30'

8. The above has lead to Natural Justice Principles [NJP] violation is learned counsel's say.

9. Ms.Amirta Dinakaran, learned Revenue counsel accepts notice on behalf of lone respondent.

10. Owing to the narrow compass/short point on which the captioned writ petition turns, the captioned main writ petition was taken up (though the matter is in the Admission Board), with the consent of learned counsel on both sides.

11. Learned Revenue counsel, on instructions, submits that the records of respondent do not reveal the issue of SCN in REG-17 template qua Rule 22(1) of TN-GST Rules.

12. Therefore, this by itself is good enough to conclude the captioned writ petition.

13. In the light of the narrative thus far, captioned Writ Petition is disposed of by passing the following order:



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(a) The impugned order being order for cancellation of GST Registration dated 30.10.2019 bearing reference No.ZA331019110945P is set aside solely on the ground that SCN which preceded the same has not been issued in the prescribed template i.e., REG-17 under Rule 22(1) of TN-GST Rules, as it does not mention the date and time of personal hearing;

(b) Though obvious, as the impugned order for cancellation of registration is set aside solely on the aforementioned ground, it is made clear that no view on merits of the matter is expressed in this order;

(c) The respondent shall issue SCN afresh (if deemed necessary), in prescribed template/format inter-alia setting out the date, time and venue for personal hearing and carry the same to its logical end as expeditiously as possible i.e., as expeditiously as the business of respondent shall permit and in any event, within six weeks from today i.e., on or before 12.11.2021;

There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mk

To

The Asst. Commissioner (Circle) of SGST
Ram Nagar Assessment Circle
Coimbatore - II
Tamil Nadu.

+1cc to the Special Government Pleader (Taxes),
High Court, Madras. S.R.No.51749

W.P.No.21109 of 2021

NMI (CO)
RGA(20/10/2021)