HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 796 of 2023

Bhupendra Singh ....Petitioner

Versus

State Tax Officer, Haldwani ....Respondent

Present:-

Mr. Piyush Garg, Advocate for the petitioner.
Mr. Mohit Maulekhi, Brief Holder for the respondent.

Judgment

Hon'ble Ravindra Maithani, J. (Oral)

The challenge is made to a show cause notice for cancellation of GST Registration dated 06.08.2022 as well as the order dated 23.08.2022, by which, the GST registration of the petitioner has been cancelled.

2. Heard learned counsel for the parties and perused the record.

3. The petitioner runs a proprietorship firm under the name and style of M/S Bhaiji and Company as a stockiest of RBM, Reta, Bajri, etc. having a place of business. He is registered under The Uttarakhand/The

Central Goods and Services Tax Act, 2017 ("the Act"), with registration No. 05AUYPS2644A1ZG.

4. On 06.08.2022, a notice was issued to the petitioner on the GST portal. It is the case of the petitioner that the notice was vague. It does not indicate, as to whom the petitioner should meet? It required the petitioner to appear before someone on 19.08.2022, which subsequently was declared as holiday, but the petitioner was never given any opportunity or any other notice to appear on any other day. Subsequently, the GST registration of the petitioner was cancelled on 23.08.2022 without affording him any opportunity of hearing.

5. It is the case of the respondent that the declared premises of the petitioner was inspected by the competent authority on 19.07.2022. Prior to it, on multiple occasions, on various dates, the petitioner was tried to be contacted through telephone so as to inform him about inspection of his premises, but he never picked up the phone; he never returned the phone call. It is also the case of the respondent that, the petitioner was issued a notice dated 06.08.2022, as to why the GST registration may not be cancelled and the petitioner was required to appear on 19.08.2022.

6. Learned counsel for the petitioner would submit that there is gross violation of the provisions of the Act in the instant case. He would refer to Rule 25 of The Central Goods and Services Tax Rules, 2017 ("the Rules") to argue that, in fact, inspection of the premises cannot be done in the absence of the petitioner. Not only this, it is submitted that the inspection report was required to be uploaded on the portal, which has never been done by the respondents.

7. Learned counsel would also submit the following points in his submissions:-

(i) The GST registration may be cancelled under Section 29 of the Act, but Section 29(2) proviso provides that before doing so, an opportunity of hearing shall be afforded to such person. He would submit that it has not been done.

(ii) The impugned order dated 23.08.2022 reveals as if, the petitioner has given a reply and in the same document, it has also been recorded that the petitioner has never given the reply.

8. Learned counsel for the respondent would submit that telephonically the petitioner was informed. He would submit that on various dates, on various occasions, the respondent authority tried to telephonically contact the petitioner so as to inform the date of inspection of his premises. But, learned counsel would submit that the petitioner has never picked up the call, he never returned the call.

9. Learned State counsel would submit that, in fact, 19.08.2022 was not holiday. It was subsequently, declared as holiday. It is also submitted that communication has been made as per Section 169 of the Act.

10. Learned counsel for the petitioner would submit that in the counter affidavit, it is not the case of the respondent that any e-mail was sent to the petitioner indicating the date of inspection.

11. A few provisions have been referred to by the learned counsel for the parties. Rule 25 of the Rules, provides for physical verification of the business premises in certain cases, which is as hereunder:-

> “**25. Physical verification of business premises in certain cases**.- Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.”

12. On behalf of the respondent, Rule 8 of the Rules has been referred to with regard to details of e-mail address and telephone numbers which reads as hereunder:-

> “**8. Application for registration**.— (1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under Section 51, a person required to collect tax at source under Section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in Section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of Section 25 and every person seeking registration under sub-section (3) of Section 25 (hereafter in this Chapter referred to as “the applicant”) shall, before applying for registration, declare his Permanent Account Number, * * * State or Union Territory in Part A of Form GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:
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> * * *
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> ………………………………………………………………….

13. Section 29(2) and Section 169 of the Act have also been referred to, they reads as hereunder:-

"**29. Cancellation or suspension of registration.—**

(1) …………………………………………..…………………………

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.

169. Service of notice in certain circumstances.— (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgment due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved."

14. Section 29 of the Act, provides that as to how, the GST registration may be cancelled. Section 29(2) proviso categorically provides that, the proper officer shall not cancel the registration without giving the person an opportunity of being heard. Reference to Rule 8 has been made on behalf of the respondent to argue that, in fact, telephonically the petitioner was tried to be contacted. Initially, in view of Rule 8, it was required that the person applying for registration shall furnish details with regard to his e-mail and mobile number, but the words e-mail and mobile number have been omitted subsequently.

15. Learned counsel for the respondent also argued that, in fact, for inspection, no notice is required to be given to the person, it is a kind of surprise inspection.

16. This argument does not merit acceptance in view of Rule 25 of the Rules, which provides that inspection shall be done in the presence of the said person. The presence of the person may only be secured by informing him about the intention of the authority to inspect. The date and time of the inspection should be

given. Once such notice is given and the person does not appear at the time of inspection, perhaps it may be said that the substantial compliance of the Rule 25 has been made. But, merely by making some telephonic call, which is neither received nor returned, it cannot be said that this Rule has been complied with. Non-informing the date and time of the inspection, would definitely vitiates such inspection.

17. Not only this, even it has not been stated by the respondents that they have uploaded the inspection report on the portal. This is one part of the GST.

18. On 06.08.2022, a notice was given by the respondent to the petitioner, it is Annexure No.2. It is definitely vague, it require the petitioner to appear before the undersigned on 19.08.2022 at 12:57. There is no undersigned. Name and designation have not been mentioned in the notice. By reading this document, one cannot ascertain, as to who signed it? It is admitted that initially 19.08.2022 was not holiday. It was subsequently declared a holiday. The notification is Annexure No.5 to the petition. Thereafter, it is not the case of the respondent that they issued any other notice to the petitioner of the date when the petitioner could have

appeared before the respondent authority/competent officer. Simply the order, cancellation of the registration has been passed on 23.08.2022. It is in non-compliance of the provision of Section 29(2) proviso, which requires that such registration may not be cancelled unless the person has been afforded an opportunity of hearing. The petitioner has not been afforded an opportunity of hearing before cancelling his GST registration. In fact, the impugned order dated 23.08.2022 begins with the following two lines, "This has reference to your reply dated 21/08/2022 in response to the notice to show cause dated 06/08/2022 whereas no reply to notice to show cause has been submitted." Both these two lines are self contradictory. The first line speaks that the reply is received. The second line speaks that no reply is received.

19. For the foregoing reasons, this Court is of the view that the impunged order dated 23.08.2022 and the notice dated 06.08.2022 are not in accordance with law. They deserve to be set aside. Accordingly, the writ petition deserves to be allowed.

20. The writ petition is allowed.

21. Both, the order dated 23.08.2022, by which, the GST registration of the petitioner has been cancelled and the show cause notice dated 06.08.2022, are quashed.

(Ravindra Maithani, J.)
04.08.2023

Sanjay