IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106 ***2024:PHHC:003999-DB***
CWP-787-2024
Date of Decision: 12.01.2024

Gupta Enterprises .....Petitioner(s)

Versus

State of Punjab and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Yogesh Putney, Advocate,
for the petitioner.

Mr. Saurabh Kapoor, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

1. The challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the orders dated 09.04.2022 (Annexure P-8) whereby GST registration of the petitioner has been cancelled which was granted on 25.08.2018 in Form GST REG-06 under Rule 10(1) (Annexure P-4). The Principal Place of Business (PPOB) was shown as B-8, GF-03, Gupta Enterprises, Nirmal Chhaya Tower, VIP Road, Zirakpur, Mohali, SAS Nagar, Punjab, 140603. The petitioner had been put to notice that the registration was liable to be cancelled as there were discrepancies noticed while conducting physical verification and the petitioner was asked to put in appearance on 22.03.2022 vide notice dated 14.03.2022 (Annexure P-7).

2. Notice of motion.

3. Mr. Saurabh Kapoor, Addl. A.G., Punjab accepts notice.

4. Keeping in view that the orders arise out of quasi judicial action of the respondents, we are of the considered opinion that no reply is necessary in the peculiar facts and circumstances.

5. It is the case of the petitioner that it had filed the necessary reply wherein, it has specifically mentioned that the application for GST number in Punjab was for the work of Extension of TMS by 24 meters at Diesel Loco Moderization Works, Patiala, Punjab and the address was of the brother of the partner. The said partnership firm was stated to be a registered government contractor enlisted as Class-I with CPWD having registered office at 252-G, Sant Nagar, East of Kailash, New Delhi and it was mentioned that they apply for GST registration in a particular State after award of work on the basis of letter of intent by the client. The justification given as such regarding the discrepancy noticed by the authority was that when the renovation of the house was going on, the workers had taken off the GST name board from wall and now it stands restored and refixed. Therefore, an assurance had been given that they would be more careful in future. The work in Punjab had been completed on 31.03.2021 and thereafter no work had been obtained and it was submitted that they were regularly filing the return as NIL.

6. Counsel has also brought to our notice that the necessary proof of renovation as such was appended alongwith other documents before the authorities whereby it showed that plumbing work was going on by a labour contractor apart from other civil works at the said site. The said documents have been stated to have been filed alongwith the reply. Vide order dated 09.04.2022 (Annexure P-8) by passing a cryptic non-speaking order, the cancellation was done on the ground that the reply has been examined and submissions made at the time of hearing and, therefore, the tax payer had been found non-existent.

7. We are of the considered opinion that firstly the principal order passed was non-speaking as such and would fall foul of the observations made by the Apex Court in ***M/s. Kranti Associates Pvt. Ltd. vs. Sh. Masood Ahmed Khan and others, (2010) 9 SCC 496*** since no valid reasons have been given and neither the fact that any renovation has been carried out has been properly examined, as noticed above.

8. The petitioner thereafter filed an application under Section 30 of the CGST Act, 2017 for revocation pleading the said ground that the reply was not properly considered. Vide the order dated 29.06.2022 (Annexure P-12), which is also subject matter of challenge, the said revocation application was dismissed under Section 30 read with Rule 23 of the CGST Rules, 2017 by observing that the JRO report did not show any sign of renovation at the time of physical verification and the tax payer had also failed to appear for personal/physical hearing. The petitioner filed an appeal which was dismissed vide order dated 27.09.2023 (Annexure P-18) by taking the adverse view that since the appellants had admitted that they did not any work in the State of Punjab after 31.03.2021 and, therefore, they were not working at the PPOB. The reasoning as such is that the ledger account and the copies of the bills and invoices showing expenses made by the petitioner against the renovation and the electricity charges were not shown. Further reasoning had been given saying that the renovation charges were not mentioned in the balance sheet/ profit and loss expenses for the financial year 2019-20 and, thus, finding was recorded that the petitioner did not possess proper proof to establish its existence at the PPOB. The contrary finding was recorded that the petitioner had appeared before the Proper Officer and represented its case whereas it is to be noticed that vide the order dated 29.06.2022 (Annexure P-

12), reasoning given for revocation was that the tax payer had also failed to appear for physical hearing.

9. Keeping in view the above, we are of the considered view that a very technical approach has been resorted to by the authorities as such. It is the specific case of the petitioner that the premises in question were the brother's residential house and, therefore, the expectation that the expenses would be shown in the balance sheets of the partnership concern would not be acceptable as apparently it is a residential house and has no connection with the partnership firm concerned. It was not the case of the respondents that the petitioner was not conducting any business as per Rule 21(a).

10. Counsel for the petitioner has also referred to Rule 25 of the CGST Rules to submit that verification of the place of business has to be done in the presence of the said person. Rules 21(a) and 25 reads thus:-

> ***21. Registration to be cancelled in certain cases.-*** *The registration granted to a person is liable to be cancelled, if the said person,-*
>
> *(a) does not conduct any business from the declared place of business; or*
>
> *xxx xxx xxx*
>
> *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."

11. Thus, the Appellate Authority has also referred to the Rule 23 to justify the said fact that the petitioner had been duly represented at all points of time. Counsel has also further pointed out that the effect of the revocation has serious ramification in as much as an order of refund of Rs.10,60,000/- has been rejected by Central Goods and Service Tax Division-1, Derabassi vide order dated 15.02.2023 (Annexure P-16) solely on this ground that their PPOB was cancelled on 09.04.2022 w.e.f. 14.03.2022. The civil consequences of the cancellation as such, thus, apparently out-weigh the manner in which the respondents have as such proceeded in dealing with the case regarding the physical verification which should have been done and proper opportunity should have been afforded.

12. Thus, we are of the considered opinion that the impugned orders as such have adversely effected the business prospects of the petitioner. Counsel for the petitioner has very fairly not pressed challenge raised to the order of refund rejecting his refund (Annexure P-16) since appeal is already pending. Accordingly, liberty is given to pursue his remedy regarding his appeal against the order rejecting the refund. Resultantly, we quash the order dated 09.04.2022, 29.06.2022 and 27.09.2023 (Annexures P-8, P-12 and P-18). The resultant effect is that the registration of the petitioner would come back into operation.

13. Writ petition stands allowed accordingly.

(G.S. SANDHAWALIA)
JUDGE

12.01.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No