



2023:KER:54774

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 13TH DAY OF SEPTEMBER 2023 / 22ND BHADRA, 1945

WP(C) NO. 25716 OF 2023

PETITIONER:

MUHAMMAD SALMANUL FARIS K,
AGED 28 YEARS
S/O. USMAN K ,KALLINGAL VALLOOR, AMAYOOR, PATTAMBI,
PALAKKAD, PIN - 679 303.

BY ADVS.
ASWIN GOPAKUMAR
ANWIN GOPAKUMAR
JIKKU SEBAN GEORGE
DEEPTI SUSAN GEORGE
SARANYA BABU
NIKITHA SUSAN PAULSON
ADITYA VENUGOPALAN
MAHESH CHANDRAN
SHALLET K. SAM

RESPONDENTS:

THE SUPERINTENDENT,
THE CGST & CENTRAL EXCISE RANGE, THE COMMERCIAL TAX
OFFICE, OTTAPPALAM, KERALA, PIN - 679 101.

BY ADV P.T.DINESH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



DINESH KUMAR SINGH, J.

WP(C) NO. 25716 OF 2023

Dated this the 13th day of September, 2023

J U D G M E N T

1. Heard Sri. Aswin Gopakumar, Learned counsel for the petitioner and Sri. P.T. Dinesh, Learned Counsel for the respondent. The present Writ Petition has been filed by the petitioner impugning Ext.P6 Order whereby the petitioner's GST registration has been cancelled. Primarily on the ground that the petitioner has issued Invoices/Bills to other dealers without supplying goods or providing any services in violation of the GST Act and Rules and such violation of raising Invoices and Bills have made use by the purchasing dealers for availment of the declaration of the input tax credit or refund of tax. It appears that some intelligence input were received for fake invoicing. The DGGI, Kochi Zonal Unit, in view of the intelligence report, vide letter dated 11.03.2023 directed the Range Officer, Ottappalam Range to cancel the petitioner's GST Registration, under Section 29 (2) (a) read with Rule 21 (e) of the CGST Act/Rules, 2017.



2. The first show cause notice Ext.P2 was issued to the petitioner on 15.03.2023. Though the reasons for issuing the notice was written, but it was no where mentioned that where the petitioner has to appear for personal hearing in pursuance to the said notice. Petitioner filed Ext.P3 reply to the said notice on 24.03.2023. Considering the said reply to the show cause notice submitted by the petitioner, Ext.P4 Order came to be passed and the said show cause notice dated 15.03.2023 was cancelled vide Order dated 27.03.2023. Ext.P5 Second Show cause notice almost in identical lines was issued on 28.03.2023. The petitioner did not submit reply to the show cause notice dated 28.03.2023. Another communication dated 12.04.2023 was issued to the petitioner mentioning that with reference to the investigation launched by DGGI, Kochi Zonal Unit into a fake invoicing cartel, indicates that the petitioner was involved in availing fake input tax credit from multiple firms. Therefore, the Deputy Director, DGGI, Kochi Zonal Unit has requested the Range Officer, Ottapalam to cancel the GST registration of the petitioner and the petitioner was given a personal hearing on 27.03.2023. However,



it appears that the petitioner did not appear on the said date and new date was fixed on 19.04.2023 at 11.45 am at the Central Revenue Building, Mettupalayam Street, Palakkad. The petitioner did not appear for the said hearing on 19.04.2023 and therefore, Ext.P6 impugned order for cancellation of the GST registration of the petitioner was passed.

3. The learned counsel for the petitioner submits that when the DGGI Cochin Unit has already taken a decision and directed for cancellation of the GST registration of the petitioner, the competent authority could not have taken a decision contrary to the said direction issued by the higher authority. It is further submitted that the said direction for cancellation of the GST registration of the petitioner was without following the due process of the law prescribed under the statutes and rules there under. It is wholly without jurisdiction and against the provision of the law and, therefore, the impugned order is liable to be set aside.

4. The learned counsel for the respondents submits that a large cartel is operating for availing fake input tax credit. There



has been intelligence input and investigation in respect of the cartel and after conducting the investigation, it was confirmed that the cartel is operating for availing the fake input tax credit, and, therefore, DGGI, Kochi Zonal Unit directed to cancel the GST registration certificate of the petitioner. He further submits that the issuance of Show cause notice and opportunity of hearing to the petitioner was granted. But the petitioner did not make use of the opportunity of hearing and not produced any documents and therefore, the impugned order has been passed.

5. Considering the aforesaid submissions, there is no denial of fact that the DGGI, Kochi Zonal Unit has already taken the decision for cancelling the GST registration of the petitioner. In my view, the competent authority was only required to form the formalities and the authority concerned or the competent authority could not have taken an independent decision. Therefore, the impugned order is set aside. However, the said order is not revived further for a period of one month.

6. The petitioner is directed to appear before the Superintendent of Central Tax & Central Excise, Ottapalam



Range, Mettupalayam Street, Palakkad on 18.09.2023 with relevant records in his possession to dispute the allegation contained in the Show cause notice. The adverse materials collected against the petitioner must be given to him for adverting the same by him. After taking the evidence from the petitioner and providing an opportunity of hearing to him, a fresh order may be passed in accordance with law within a period of three weeks from 18.09.2023. If the show cause is cancelled, the petitioner would be entitled for restoration of the GST registration certificate. However, if the authority takes a decision to cancel the GST registration of the petitioner, he may take recourse to appropriate proceedings as available under law.

7. It is made clear that the Superintendent of Central Tax should take an independent decision without being influenced by the direction of the DGGI, Kochi Zonal Unit.

8. With the aforesaid directions, the writ petition stands disposed of.

Sd/-
DINESH KUMAR SINGH
JUDGE

**APPENDIX OF WP(C) 25716/2023**

PETITIONER'S EXHIBITS

- Exhibit P-1 A TRUE COPY OF THE REGISTRATION CERTIFICATE BEARING NO. 32MTQPK3810B1ZT ISSUED TO THE PETITIONER ON 10.01.2023 BY THE RESPONDENT
- Exhibit P-2 A TRUE COPY OF THE NOTICE DATED 15.03.2023 BEARING REFERENCE NO. ZA3203230212962
- Exhibit P-3 A TRUE COPY OF THE LETTER DATED 24.03.2023 SUBMITTED BY THE PETITIONER TO THE RESPONDENT
- Exhibit P-4 A TRUE COPY OF THE NOTICE DATED 27.03.2023 BEARING REFERENCE NO. ZA320323075837G ISSUED BY THE RESPONDENT
- Exhibit P-5 A TRUE COPY OF THE NOTICE DATED 28.03.2023 BEARING REFERENCE NO. ZA320323078913L
- Exhibit P-6 A TRUE COPY OF THE ORDER DATED 20.04.2023 BEARING REFERENCE NO. ZA320423022896N ISSUED BY THE RESPONDENT CANCELLING GST REGISTRATION OF THE PETITIONER

RESPONDENT EXHIBITS

- Exhibit-R1 True copy of the letter dated 9.03.2023 (signed on 11.03.2023) by the Deputy Director, Directorate General of GST Intelligence (DGGI), Kochi Zonal Unit, Central Excise Bhawan, Kathrikadavu, Kaloor P.O, Kochi-682017
- Exhibit-R2 True copy of the relevant part of the image dated 24.03.2023 of the portal of the petitioner
- Exhibit-R3 True copy of the relevant part of the image dated 27.03.2023 of the portal of the petitioner
- Exhibit-R4 True copy of the relevant part of the image dated 28.03.2023 of the portal of the petitioner
- Exhibit-R5 True copy of the Letter OC No.59/2023 dated 12.04.2023 issued by the Superintendent, Ottapalam Range to the petitioner