

Court No. - 10

Case :- WRIT TAX No. - 648 of 2021

Petitioner :- Umesh Kumar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Puneet Arun

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

Heard Sri Puneet Arun, learned counsel for the petitioner and Sri Rishi Kumar, learned Standing Counsel for the State.

This writ petition has been filed against the order dated 14.5.2019 cancelling the registration of the petitioner under the U.P. Goods and Services Tax Act, 2017 and the order dated 25.3.2021 passed by the First Appellate Authority upholding the order of cancellation of registration.

The petitioner was assessee under the U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as 'the GST'). Due to non filing of the return by the petitioner, a show cause notice was issued by the Department which remain unattended by the petitioner and the registration of the firm stood cancelled by the order dated 14.5.2019 as stated in the show cause notice dated 29.4.2019. The show cause notice further stated that there was an outstanding Central Tax amounting to Rs.3,21,205/- and State Tax/UT Tax amounting to Rs.3,21,205/-. The petitioner deposited the amount on 30th January, 2021, a copy of the receipt has been enclosed as Annexure-4 to the writ petition. On 3.2.2021, a revocation application was preferred by the petitioner as required under Rule 23 of U.P. GST Rules, 2017 (hereinafter referred to as the 'Rules, 2017), in FORM GST REG-21. On 17.2.2021, the Taxing Authority rejected the revocation application of the petitioner on the ground that he has not filed the return within time. Against the order rejecting the revocation application, an appeal was filed by the petitioner before the Additional Commissioner, Grade-2 (Appeal), Commercial Tax, Muzaffarnagar. By the order impugned dated 25.3.2021 the first appeal has been dismissed.

Learned counsel for the petitioner submitted that the finding recorded by the First Appellate Authority was to the contrary as the entire payment to the tune of Rs.7,29,748/- was made by the petitioner on 3.1.2021 and the return was also filed on the same. According to the learned counsel for the petitioner, the reason recorded in rejecting the revocation application is wrong that the petitioner has not filed return though it was filed when the

disputed amount of tax was deposited by the petitioner/assessee. He further contends that the finding recorded by the First Appellate Authority is patently wrong to the extent that no return has been filed and the appeal has been wrongly rejected. Reliance has been placed upon a decision of the Madras High Court in the case of **Tvl. Suguna Cutpiece Center vs. The Appellate Deputy Commissioner (ST) (GST) and others**. He has also relied upon a decision of the coordinate Bench of this Court in the case of **M/s Ansari Constructions vs. Additional Commissioner Central Goods and Services Tax (Appeals) and 2 others**.

Learned Standing Counsel Sri Rishi Kumar has heavily relied upon the provisions of Rule 23 of Rules, 2017, wherein it has been provided that the revocation application against the cancellation of registration has to be moved within 30 days, but in the present case, as the registration was cancelled in the year 2019 and the revocation application having been filed in the year 2021, the Assistant Commissioner as well as the Appellate Authority has rightly rejected the revocation application of the petitioner.

I have heard respective counsels for the parties and perused the material on record.

It is not in dispute that due to non filing of the return by the petitioner a show cause notice was given to him by the Taxing Authority on 29.4.2019, against which no reply was filed by the petitioner and the cancellation of registration came into effect from 14.5.2019 as stated in the said show cause notice. The assessee after coming to know about the cancellation of registration had deposited the entire tax on 30th January, 2021 and had also filed return before the concerned authority. On 17.2.2021 the Assistant Commissioner rejected the revocation application of the petitioner on the ground that the return was not filed within time. The appeal of the petitioner was also rejected by the First Appellate Authority on the ground that the return was not filed within time.

This Court finds that under Rule 23 of Rules, 2017, it has been specifically mentioned that the revocation application has to be preferred within 30 days from the date of service of order of cancellation of registration. In para 10 of the writ petition, there is categorical averment to the effect that the petitioner had filed his return up to May, 2019, on 30th January, 2021 and had paid all the dues along with interest.

In the counter affidavit filed by the State, para 10 of the writ petition has not been denied and it has been stated that the

contents of para 10 of the writ petition needs no reply. Moreover, in the counter affidavit, there is no averment as to the date of service of the order of cancellation of registration upon the petitioner as contemplated under Rule 23 of Rules, 2017, though the show cause notice dated 29.4.2019 provides that the cancellation of registration shall come into effect from 14.5.2019.

The purpose of inserting the provision under Rule 23 of Rules, 2017 as to service of notice upon the assessee is to provide an opportunity to him to move a revocation application so as to save the registration from being cancelled permanently and his business being hampered.

The Act and the Rules have been brought so as to see the business is run smoothly and is not hampered by the intricacies of the provisions of the Act. The coordinate Bench of this Court in **M/s Ansari Constructions (supra)** while dealing with Section 29 of the GST, 2017 and Rule 23 of Rules, 2017, has held that once the Department has accepted the return and there remains no dues, the Department should not obstruct the business of an assessee.

In the present case, as the petitioner has come with the case that he has deposited the entire tax and has filed return in the year 2021, the said Act having not been denied by the State, the rejection of registration solely on the ground of delay in moving the revocation application, is not sustainable in law. Moreover, the Appellate Authority has not recorded any categorical finding as to the service of notice and merely on the ground that the application was time barred, proceeded to uphold the order of rejection of revocation application.

Considering the facts and circumstances of the case, I find that the orders dated 14.5.2019 and 25.3.2021 passed by the opposite parties are unsustainable in the eye of law and are hereby quashed.

The writ petition stands **allowed**.

Order Date :- 25.11.2022

SP

