

Neutral Citation No. - 2023:AHC:215802-DB

Court No. - 39

Case :- WRIT TAX No. - 1047 of 2023

Petitioner :- Hindustan Paper Machinery Industries

Respondent :- Commissioner Cgst And 2 Others

Counsel for Petitioner :- Gaurav Dwivedi, Gaurav Dwivedi, Nishant Mishra

Counsel for Respondent :- Gaurav Mahajan, Gopal Verma

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Sri Nishant Mishra, Advocate alongwith Sri Gaurav Dwivedi, learned counsel for the petitioner and Sri Gaurav Mahajan, learned standing counsel for the respondents. In undisputed facts as to the conduct of the proceedings, the writ petition is being disposed of finally, without calling for counter affidavit.

2. Present writ petition has been filed against the order dated 9.8.2023 passed by the Superintendent, CGST Range 14, Division IIIrd, Ghaziabad. By that order the said authority has cancelled the registration of the petitioner under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act').

3. At the outset, learned counsel for respondent has raised preliminary objection as to existence of statutory alternative remedy.

4. Undeniably, such remedy exists. However in the peculiar facts of the present case, that remedy is found to be wholly inadequate.

5. Admittedly the petitioner had obtained registration under the Act. He was issued show-cause notice dated 23.3.2023 seeking to cancel that registration. For ready reference that notice reads as below:-

" Form GST REG-17

[See Rule 22(1)/sub-rule (24) of rule 214)

To

Registration Number (GSTIN/Unique ID): 09AADFH475IN1ZZ

HINDUSTAN PAPER MACHINERY INDUSTRIES

138, B. S. ROAD, INDUSTRIAL AREA, Ghaziabad, Uttar Pradesh, 201001

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. Issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax.

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

You are hereby directed to appear the undersigned on 28/03/2023 at 03:28 PM

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

Please note that your registration stands suspended with effect from 23/03/2023

Place: Uttar Pradesh

Date: 23/03/2023

6. The petitioner responded to the notice vide its reply dated 28.3.2023. It read as below:-

"To,

28/03/2023

DC/AC

Div- III , G 2B

Goods & Service Tax Department,
Ghaziabad.

**Reg: M/S. HINDUSTAN PAPER MACHINERY INDUSTRIES,
C-138, B.S ROAD IND. AREA, GHAZIABAD.**

GSTN: 09AADFH4751N1ZZ

Sub: Reply to Show cause notice for Cancellation of registration

Sir,

This is with regard to your show cause notice ZA0903231727368 dt.23/03/2023 which has been issued for the reason as given under:

Issue any invoice or Bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of Input Tax credit or refund of tax.

In this regard the assessee has to state that there was a survey conducted by the DGGI, Delhi on 03/02/2023. The assessee's case is under investigation and the matter has not been finalized by the DGGI, Delhi.

Also it is stated that the assessee has also approached the Hon'ble High court vide writ petition no. W.P.(C) 3752/2023. And the matter is sub judice at this moment.

Thus it is requested to keep the suspension of Registration in abeyance till the investigation with the DGCI, Delhi is not completed and the order of Writ is not delivered by the Hon'ble High Court.

Thanking You,
Yours faithfully
(SAMIT BAJAJ)
Advocate
Counsel for the assessee"

7. On such notice and reply furnished thereto, the impugned order dated 9.8.2023 has been passed. It reads as below:-

"Form GST REG-19.

[See rule 22 (3)]

Reference Number: ZA0908230818707

Date 09/08/2023

To
HINDUSTAN PAPER MACHINERY INDUSTRIES
C 138,B. S. ROAD INDUSTRIAL AREA,Ghaziabad, Uttar
Pradesh,201001

GSTIN/UIN :09AADFH475INIZZ

Application Reference Number (ARN): AA090323131370P

Date 02/04/2023

Order for Cancellation of Registration

This has reference to show notice issued dated 23/03/2023.

The effective date of cancellation of your registration is 23/03/2023

3. It may be noted that a registered person furnishing return under sub-section (1) of section 39 of the CGST Act, 2017 is required to furnish a final return in FORM GSTR-10 within three months of the date of this order.

4. You are required to furnish all your pending returns.

5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation

Place: MEERUT

Date :09/08/2023

PK Meena
Superintendent
Ghaziabad Sector-17"

8. From a bare reading of the notice, reply furnished thereto and the impugned order it transpires, in the first place a wholly non-speaking show-

cause notice was issued to the petitioner. Besides making reference to the statutory requirement/ obligation on a registered person to issue a tax invoice only against actual business transaction, no fact allegation was made in that notice of any violation/ infringement of that statutory requirement, committed by the petitioner. Neither date or detail of the tax invoice nor goods involved nor their value etc. nor the purchaser were disclosed. Even the period during which the law may have been allegedly infringed by the petitioner, was not specified in the show-cause notice. At the same time, the said communication suspended the registration of the petitioner.

9. Seen in that light, though the petitioner's reply dated 28.3.2023 may also be described as vague at the same time it is difficult to accept that an adverse conclusion may have been drawn against the petitioner solely on that basis. Unless the show-cause notice had made any fact allegation against the petitioner, the vagueness of the reply may remain inconsequential.

10. Cancellation of registration has serious impact on a business entity. It causes a direct effect of closure of business. Unless the registration survives, no tax invoice may be issued and no return may easily be filed.

11. In any case, the order impugned dated 9.8.2023 assigns no reason whatsoever to cancel the petitioner's registration.

12. In view of the discussion made above, such an order may not survive the test of law. Relegating the petitioner to the forum of alternative remedy in face of undisputed facts noted above may be of no real use or purpose. The writ court regularly relegates petitioners specifically in tax matters, to the forum of the statutory remedy of appeal where minimum compliances of law have been made. However on lack of jurisdiction or violation of principle of natural justice, the writ Court is equally inclined to offer interference to ensure due adherence to the rule of law both by the assessee as also the revenue authority.

13. Accordingly, in the facts noted above, the objection of the maintainability of the present writ petition is over ruled.

14. The writ petition is disposed of with a direction, that the suspension of the registration of petitioner may remain in force for a period of one month, in the first place. In the meanwhile, the respondent no.5 may issue a fresh show-cause notice to the petitioner, if so advised within a period of one week from today. The petitioner undertakes to furnish reply thereto within a period of ten days. Upon such reply being filed the respondent no.5 may pass appropriate reasoned order within a period of one week. The rights of the parties shall abide by the final order to be passed in terms of the present order.

15. If however respondent fails to issue any fresh show-cause notice, the suspension order shall come to an end at the end of one month.

Order Date :- 8.11.2023

Abhishek Singh

(Shiv Shanker Prasad,J.) (Saumitra Dayal Singh,J.)

