Court No. - 1

Case :- WRIT TAX No. - 451 of 2020

Petitioner :- Ashwani Agarwal
Respondent :- Union Of India Through Secretary (Revenue) And 2 Others
Counsel for Petitioner :- Rahul Agarwal
Counsel for Respondent :- A.S.G.I.,Ashok Singh

Hon'ble Ramesh Sinha,J.
Hon'ble Samit Gopal,J.

Heard Sri Rahul Agarwal, learned counsel for the petitioner, Sri Ashok Singh, learned counsel appearing on behalf of the respondent nos. 2 and 3 and Sri M.K. Kushwaha, learned Standing Counsel for the State-respondent.

The present writ petition has been filed with the prayer:-

(i) issue a writ, order or direction in the nature of Certiorari quashing the order dated 14.04.2020 (Annexure-5 to the writ petition) passed by the respondent no.3.

Learned counsel for the respondent nos. 2 and 3 has raised a preliminary objection regarding the prayer made in the present petition stating that the petitioner has an alternative remedy under Section 30 of the Central Goods and Services Tax Act, 2017, for revocation of the impugned order.

Learned counsel for the petitioner has vehemently objected to the preliminary objection as raised by the learned counsel for the respondent nos. 2 and 3 and submitted that since the impugned order on the face of it is per-se illegal and also the reading of the same would go to show that the same has been passed without application of mind and the action of the concerned authority is arbitrary, hence the present writ petition is maintainable and the objection with regards to an alternative remedy being available does not sustain.

Learned counsel for the petitioner then arguing the matter on merits has submitted that the petitioner is registered under the Goods and Service Tax Act with GSTIN No. 09AAPPA8995F1Z4. He was issued a notice dated 24.04.2019 from the office of the respondent no. 2 Commissioner, Central Goods and Services Tax and Central Excise to which he responded and sent a reply through speed post on 03.05.2019. It is further stated that the petitioner submitted a statement of purchase dated 14.05.2019 on 15.05.2019. It is further argued that subsequently on 14.02.2020 a show cause notice for cancellation of registration was issued to the petitioner and in response of which on 25.02.2020, a counsel for the petitioner had put in appearance in the hope that the details on the basis of which show cause notice has been issued would be made available to the petitioner's counsel. Lastly, it is submitted that on 14.04.2019, the order impugned has been passed by the Superintendent Kanpur Sector 12, cancelling the registration on the following reasons:- "Since taxpayer not attended PH nor submitted any reply hence cancellation approved".

Learned counsel for the petitioner has argued that in the said order dated 14.04.2020, cancelling the registration of the petitioner, the officer concerned has in the very beginning of the same started with the order stating that the same has a reference to his reply dated 25.05.2020 in response to the notice of show cause dated 14.02.2020. Learned counsel has argued that the reason for cancellation mentions that the taxpayer has not attended PH nor submitted any reply and hence cancellation has been approved which is totally contrary to the fact as stated in the same order itself, whereby it mentions that the concerned officer has taken reference of reply dated 25.02.2020 of the petitioner in response to the show cause notice dated 14.02.2020. It is argued that the order is on the face of it arbitrary and contrary to the specific reference in the order itself as it states that the petitioner has not submitted any reply and as such the cancellation of the registration was approved and thus deserves to be set aside.

Sri Ashok Singh, learned counsel for the respondent nos. 2 and 3 has very fairly conceded that the impugned order cannot be sustained in the eyes of law and the matter be remanded back to the concerned authority for passing a fresh order in accordance with law.

After hearing counsels for the parties and perusing the record, it is apparent that while giving the reason for cancellation of the registration, it is mentioned that no reply has been received from the petitioner whereas in the same order in the very beginning there is a specific reference that the said order has taken into the reference the reply dated 25.02.2020 of the petitioner which is in response to the notice to show cause dated 14.02.2020, which is contrary in itself.

In view of the same, the order dated 14.04.2020 passed by the Superintendent, Kanpur Sector 12, Central Goods and Services Tax (Annexure 5 to the writ petition), is set aside with liberty to respondent no. 2 to pass a fresh order in accordance with law.

The writ petition is accordingly allowed. No order as to costs.

The party shall file computed generated copy of order downloaded from the official website of High Court Allahabad, self attested by it alongwith a self attested identity proof of the said person(s) (preferably Aadhar Card) mentioning the mobile number(s) to which the said Aadhar Card is linked.

The concerned Court/Authority/Official shall verify the authenticity of the computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 7.9.2020
M. ARIF

(Samit Gopal, J.) (Ramesh Sinha, J.)