



2023:KER:73051

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

WEDNESDAY, THE 22ND DAY OF NOVEMBER 2023 / 1ST AGRAHAYANA, 1945

WP(C) NO. 37875 OF 2023

PETITIONER/S:

ANILKUMAR MADHUSUDHANAN, AGED 42 YEARS
MADHUVILASAM, WARD 8, NO.2J & 2K GROUND FLOOR, KALIKAVU
TEMPLE, MAIN CENTRAL ROAD, KURAVILANGAD, KOTTAYAM, PIN -
686633

BY ADVS.HARISANKAR V. MENON; MEERA V.MENON
R.SREEJITH; K.KRISHNA; PARVATHY MENON

RESPONDENT/S:

- 1 THE SUPERINTENDENT
TAX PAYER SERVICES, CIRCLE PALA, CENTRAL GST & CENTRAL
EXCISE, PALA RANGE, PALA, KOTTAYAM, PIN - 686575
- 2 UNION OF INDIA, REPRESENTED BY SECRETARY TO GOVERNMENT,
MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK,
NEW DELHI, PIN - 110001
- 3 STATE OF KERALA, REPRESENTED BY ITS SECRETARY, TAXES
DEPARTMENT, GOVERNMENT SECRETARIATE,
THIRUVANANTHAPURAM, PIN - 695001

OTHER PRESENT:

JASMINE M.M.-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



J U D G M E N T

The present writ petition has been filed impugning the order dated 05.10.2023 passed by the 1st respondent cancelling the GST Registration of the petitioner.

2. The petitioner was issued a show cause notice in Ext.P2 dated 09.08.2023 asking the petitioner to show cause why the petitioner's registration should not be cancelled for the reason '*Section 29(2)(e)-registration obtained by means of fraud or willful misstatement or suppression of facts.*' It is relevant to note that the notice does not further delineate what fraud, willful misstatement or suppression of facts were there at the time the petitioner obtained the GST registration.

3. Be that as it may, the petitioner has replied to the said show cause notice in Ext.P3. After considering the reply to the show cause notice, the Ext.P4 order has been passed by the 1st respondent. Ext.P4 order, on reproduction, would read as under:



“Order for Cancellation of Registration

This has reference to show cause notice issued dated 09/08/2023.

The effective date of cancellation of your registration is 16/03/2023.

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.”

4. Section 29 of the CGST/SGST Act 2017 empowers the competent authority to cancel or suspend the registration for the grounds mentioned in the said section. Subsections (1) and (2) of Section 29 are extracted hereinbelow for ready reference.

“29. Cancellation [or suspension] of registration



(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,-

- (a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other leg entity, demerged or otherwise disposed of; or
- (b) there is any change in the constitution of the business; or
- (c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25:

PROVIDED that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

(2) The proper officer may cancel the registration of a person from such including any retrospective date, as he may deem fit, where,-

- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) a person paying tax under section 10 has not furnished the return for a financial year beyond three



months from the due date of furnishing the said return;

or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration;

or

(e) registration has been obtained by means of fraud, willful misstatement or suppression of facts:

PROVIDED that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

PROVIDED FURTHER that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.”

(emphasis supplied)

5. From the perusal of the aforesaid provision of Section 29, it is evident that registration obtained by a person under the GST can be cancelled if the same has been obtained by means of fraud, willful misstatement or suppression of



facts. Though clause (e) of sub-section (2) of Section 29 of the GST Act is extracted in the show cause notice, neither in the show cause notice nor the impugned order (Ext.P4), it is not made clear what kind of fraud, willful misstatement or suppression of fact were there at the time of granting GST registration to the petitioner. The impugned order is wholly a non-speaking order. As such, the order is unsustainable in law.

Therefore, the writ petition is allowed. The impugned order is set aside. The matter is remitted back to the files of the 1st respondent to pass a reasoned order after giving an opportunity of hearing to the petitioner. The petitioner is directed to appear before the 1st respondent on 01.12.2023 and make his submissions.

Sd/-

DINESH KUMAR SINGH

JUDGE



APPENDIX OF WP(C) 37875/2023

PETITIONER EXHIBITS

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| Exhibit P1 | COPY OF REGISTRATION CERTIFICATE OF THE PETITIONER DTD. 15-03-2023 |
| Exhibit P2 | COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 09-08-2023 |
| Exhibit P3 | COPY OF REPLY FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 14-08-2023 |
| Exhibit P4 | COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DTD. 05-10-2023 |