

Court No. - 3

Case :- WRIT TAX No. - 85 of 2024

Petitioner :- M/S Baba Industries Reg.No.(Gstin/Unique Id)

09amepv7468d2zi Thru. Proprietor Deepanshu Srivastava

Respondent :- Union Of India Thru. Secy. Ministry Of Finance , New Delhi And Others

Counsel for Petitioner :- Mukesh Kumar Tewari,Devam Shukla,Vijay Dixit

Counsel for Respondent :- A.S.G.I.,Anindya Shastri,Dipak Seth

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the petitioner and Sri Anindya Shastri, learned counsel appearing for opposite parties no.2 and 3.
2. This writ petition has been filed with the following main prayer:-

"Issue a writ, order or direction in the nature of Certiorari thereby quashing the impugned show cause notice for cancellation of registration cum suspension order dated 22.03.2024, contained as Annexure no.1 to the writ petition, in the interest of justice."

3. We have heard Sri Anindya Shastri, learned counsel appearing for opposite parties no.2 and 3 specifically on the query put by the Court in its order passed earlier on 22.04.2024. The order dated 22.04.2024 is a detailed order, which is being quoted herein-below:-

*"1. The contention raised before us is that no reasons have been assigned in the impugned order requiring the petitioner to show cause for cancellation of registration. Further contention is that even for suspension as per Section 29(2) of the Central Goods and Service Tax Act, 2017 read with Rule 21-A(2) of the rules made thereunder, the word reason to believe required satisfaction to be recorded that the registration is liable to be cancelled but the show cause notice itself is cryptic and bereft of any recital as regards the material even *prima facie* which may have been considered for issuance of the show cause notice and for suspension of the registration. However, we find that in the last line of the show cause notice, it is mentioned - "kindly refer the supportive documents attached for case specific details", we asked learned counsel as to where are these documents he submitted that petitioner has not received the same.*

2. At this stage, learned counsel for the petitioner invited our attention to the petitioner's additional reply to the impugned show cause notice contained in Annexure No.9 to the writ

petition to submit that it has been specifically mentioned therein that there is no mention in the show cause notice about what type of fraud, willful miss-statement or suppression of facts has been committed, therefore, the notice is illegal. This apart, it has also been mentioned about absence of any material in respect of the allegations in these show cause notice, on account of which, he is unable to file a proper, effective and detailed reply.

*3. As regards the objections of Shri Dipak Seth, learned counsel for the respondents that the petition against show cause notice is not maintainable. At this stage, we are of the opinion, that if it is the case of the petitioner that the show cause notice does not comply the statutory requirement and is bereft of any *prima facie* reason and material in support thereof then it would be very difficult to support the submission of Shri Seth, however, we keep this question open for consideration on the next dates after he satisfies us that documentary proof in respect of the show cause notice were uploaded and provided to the petitioner and also that the recitals in the notice are sufficient in terms of the statutory provisions for asking the petitioner to show cause for such cancellation of registration.*

4. Let Shri Seth, seek instructions specifically with regard to the documents referred in the last line of the show cause notice dated 22.03.2024 whether they were uploaded online, if so, what are those documents and to place them before us. Shri Seth, shall also place before the Court proof of attachment of the said documents to the show cause notice.

5. List/put up on 08.05.2024 as fresh."

4. Despite the matter being listed on several occasions thereafter, it could not be taken up on merits due to paucity of time. Today when the matter was taken up, learned counsel for opposite parties no.2 and 3 has placed before this Court a print out of snap shot taken from the portal of one Kishor Kumar Chauhan showing his designation as Superintendent and from the said print out, which is in the form of a single piece of paper, it is not evident as to what documents were uploaded on the website/portal.

5. Learned counsel for opposite parties no.2 and 3 has pointed out the remarks column of the page that has been provided to us that it has the description of Section 29(2)(e) registration obtained by means of fraud, wilful misstatement or suppression of facts. The remarks that have been mentioned as per letter dated 18.03.2024 of Deputy Director, DGGI, Lucknow Zonal Unit, clearly make out that the tax payer was not existent.

6. It is the case of the opposite parties that a raid was conducted in the principal place of the business of the petitioner's firm i.e. at Dewa Road, Barethi, Gadia, Barabanki, which was 80 Sq.Ft. premises dealing only with FMCG products. The Sales Manager of the said firm was interviewed and he had stated that he has been working in the firm for the past two years and he had never seen any trading being done in iron or paper scrap. There were huge mismatches between amount of inward and outward supplies. The inward supply shown by the petitioner is of Rs.8,87,37,536/-, whereas the outward supply is to the tune of Rs.26,10,90,756/-. The description given in the e-way bills and the tax invoices show that the petitioner is dealing with waste and scrap paper, iron waste and scrap and also waste and scrap of plastic. The outward supplies of M/s Baba Industries have also been found to be either non-existent upon verification or have been found to be operated by Deepanshu Srivastava and his associates. Search operations having been carried out on 30.01.2024 on the principal place of business, it was found that the petitioner was running fake and fraudulent operations only for the purpose of generating fake ITCs to be utilised further by his associates.

7. This Court put a specific query to the learned counsel for the opposite parties as to whether there is any provision in the Central Goods and Service Act and the Rules framed thereunder for proceeding against a person/registered trader if he misconducts himself and is guilty of fraudulent operations after his registration, which was initially obtained in accordance with the procedure prescribed in the statute.

8. There is no reply submitted by Sri Anindya Shastri, learned counsel for the opposite parties and he says that petitioner has only challenged the show cause

notice issued under Section 29 of the Central Goods and Service Act. If there is sufficient material while issuing the show cause notice for suspending the registration of a trader, such suspension order can also be passed simultaneously with the show cause notice. The petitioner has not yet submitted his reply to the show cause notice and if the petitioner submits his reply, the same shall be considered and appropriate order shall be passed thereon in accordance with law.

9. Learned counsel for the petitioner has argued that initially the petitioner had given a reply to the show cause notice on 26.03.2024 and then again an additional reply was submitted on 10.04.2024 and in both the replies, the petitioner has asked for documents which have been referred to containing specific details as mentioned in the show cause notice dated 22.03.2024. Such documents have not been supplied till date.

10. It has been submitted by the learned counsel for the petitioner that petitioner is running two services and five businesses registered under the same GSTN and he has two places of business and that initially the petitioner was registered for trading in FMCG products, but later on, he had filed an application for amendment in registration and for adding and changing the principal place of business i.e. Dewa Road, Barethi, Gadia, Barabanki and the amendment was allowed by the competent officer under the Central Goods and Service Act. Learned counsel for the petitioner has specifically referred to Section 29 of the Central Goods and Service Act and Rule 19 of the Central Goods and Service Rules, but the opposite parties have themselves not looked into the amended registration of the petitioner.

11. Learned counsel for the petitioner has also

reiterated that all supporting documents as mentioned in the last line of the show cause notice have not been provided to the petitioner. It has also been stated that petitioner was arrested on 02.02.2024, but has been released on bail only because the department could not conclude the enquiry and submit a complaint to the Magistrate concerned. It is his case that the department does not have any material against the petitioner. Had any material been gathered by the opposite parties during enquiry, they would have certainly been filed a complaint before the Magistrate within time.

12. Learned counsel for the petitioner has placed reliance upon a judgment rendered by the Delhi High Court on 12.09.2023 in ***Writ Petition (C) No.11963 of 2023, M/s Rahul Kumar Jain and Co. Vs. Union of India and another***, wherein the registration of the petitioner was cancelled pursuance to a show cause notice issued to him.

13. The show cause notice that was issued to the petitioner therein on 16.05.2023 had alleged that the petitioner's GST registration was proposed to be cancelled on account of fraud, willful misstatement or suppression of facts; however, it did not provide any specific reason as to the alleged fraud, wilful misstatement and it did not provide any clue as to the facts which were allegedly suppressed by the petitioner. The petitioner had responded to the said show cause notice denying all the allegations. The petitioner had also submitted that it had no clue as to why its GST registration was sought to be cancelled and having been obtained by fraud, wilful misstatement or suppression of facts. Since specific ground for such proposed action was not provided and no further information was given to the petitioner, the order of cancellation of the petitioner's GST

registration was set aside.

14. We find from the order passed by the Delhi High Court that the petitioner had challenged the final order dated 29.05.2023, by which the petitioner's GST registration was cancelled along with his challenge to the show cause notice dated 16.05.2023. In the petitioner's case, the statutory authority has not yet passed any final order.

15. Having considered the arguments made by the learned counsel for the parties, this Court is of the opinion that interest of the petitioner can be sufficiently protected if a direction is issued to opposite party no.3 to provide all documents to the petitioner which have been referred to in the show cause notice, on the basis of which the show cause notice dated 22.03.2024 was issued to the petitioner, within ten days from today. The petitioner on receipt of such documents, shall submit his reply/additional reply within ten days thereafter. The competent authority shall take into account the reply of the petitioner and then pass a reasoned and speaking order within a period of two weeks from the date of submission of the additional reply by the petitioner.

16. Writ petition stands ***disposed of.***

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(Brij Raj Singh, J.) (Sangeeta Chandra, J.)

Order Date :- 4.9.2024

Rao/-