

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M.BADAR

THURSDAY, THE 5TH DAY OF AUGUST 2021 / 14TH SRAVANA, 1943

WP(C) NO. 28917 OF 2020

PETITIONER/S:

F R TRADE LINKS, 6/580 E, THEKKEMURANJOOR BUILDING,
ERATTUPETTA-VAGAMON ROAD, ERATTUPETTA, KOTTAYAM-686121,
REPRESENTED BY ITS PROPRIETOR SRI. MOHAMMED RIZWAN
RASHEED.

BY ADVS.
AJI V.DEV
SRI.ALAN PRIYADARSHI DEV
SHRI.KIRAN RAMACHANDRAN NAIR

RESPONDENT/S:

- 1 THE STATE TAX OFFICER,
STATE GOODS AND SERVICES TAX DEPARTMENT, PALA - 686565.
- 2 THE ASSISTANT STATE TAX OFFICER, SQUAD 2, INTELLIGENCE
WING, STATE GOODS AND SERVICES TAX DEPARTMENT, 2ND FLOOR,
MINI CIVIL STATION, PALA-686575.
- 3 GOODS AND SERVICES TAX NETWORK,
REPRESENTED BY ITS CHAIRMAN, EAST WING, 4TH FLOOR, WORK
MAR-1, AEROCITY, NEW DELHI-110037.
- 4 THE COMMISSIONER OF STATE TAXES, TAX TOWER, KILLIPALAM,
KARAMANA P.O., THIRUVANANTHAPURAM-695002.

BY ADV GOVERNMENT PLEADER

SMT.M.M.JASMINE , GP,

SRI.P.R.SREEJITH, SC, GSTN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
05.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Heard both sides.

2. The petitioner, a registered person, by this petition, is challenging the orders at Exts.P8 and P12 cancelling his certificate of registration under the CGST/SGST Act and rejection of his application for revocation of cancellation of registration certificate.

3. Learned counsel appearing for the petitioner drew my attention to the order of cancellation of registration and submitted that respondents have invoked provisions under Sub Section (2) of Section 29 of the CGST/SGST Act, 2017 for cancellation of registration of the petitioner. However, the reasons stated in the impugned order at Ext.P8 are not in consonance with the powers conferred by the respondents for cancellation of registration. It is further submitted by the learned counsel appearing for the petitioner that the order for rejection of application for revocation of cancellation also suffers from non-application of mind and it is an unreasoned order, without mentioning any reason for rejection of

application for revocation of cancellation. Learned counsel appearing for the petitioner submitted that the petitioner has honestly given all necessary particulars in the application for registration of (Ext.P17) and no case is made out by the respondents that the registration has been obtained by the petitioner by means of fraud, willful misstatement or suppression of facts.

4. Learned counsel appearing for the petitioner, by placing his reliance on judgment of this Court in the matter of P.Y. Mustaffa, Kanakonam Traders, Erattupetta V. Additional Sales Tax Officer, Pala & Another [(2002) 10 KTR 192] submitted that the matter of registration is merely regulatory in nature and no overbearing importance can be given to minor lapses in such matter.

5. Learned Government Pleader opposed the petition by placing reliance on the counter affidavit. She submitted that several inspections were conducted by the respondents at the principal place of business of the petitioner. It is submitted that during inspection, it was found that no business was conducted at the place of principal business centre. The building was not having any building number or shutter and no books of accounts were placed at that place of

principal business. The door was fully opened and some water tanks were kept. The building was found to be having no change in structure during second inspection. In second inspection, it was found that some stock was kept at the new premises near the house of the petitioner, but that place was not added in the GST registration and therefore, it was suspected to be a bogus. The business in the name and style of 'F.R Trade Links' was not found functioning in the given address and therefore, the impugned action was taken. Learned Government Pleader tried to place reliance on some other aspects which are unfortunately not mentioned as a reason for cancellation of registration of the petitioner and therefore, it is not necessary to elaborate the same while incorporating the argument of the learned Government Pleader.

6. I have considered the submissions so advanced and also perused the materials placed before me.

7. The impugned order of cancellation of registration of the petitioner is dated 02.11.2020 and is at Ext.P8. Perusal of that order shows that registration is cancelled by invoking provision of Sub Section (2) of Section 29 of the CGST Act, 2017. It is worthwhile to

reproduce provisions of Sub Section (2) of Section 29 of the CGST Act, which reads thus:-

"29. Cancellation or suspension of registration: (1) xxxxxxxxxxxx

(2) *The proper officer may cancel the registration of a person from such date, 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 returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; 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."

It is seen from the foregoing provision of law that the proper officer can cancel registration of a person for the reasons stated in Sub Section (2) of Section 29 of the CGST Act. It is not the case of the respondents that the petitioner had contravened any of the provisions of the Act or Rules made thereunder, inasmuch as, no

such allegation is levelled against the petitioner either in the show cause notice (Ext.P5) nor such accusation is made against him in the impugned order at Ext.P8. My attention is not drawn to contravention of any provision of the Act or Rules framed thereunder by the learned Government Pleader. Similarly, there are no allegations either in the show cause notice or in the impugned order that the petitioner has failed to furnish returns for three consecutive tax periods or that he failed to file returns for a continuous period of six months. It is not averred either in the show cause notice or in the impugned order at Ext.P8 that the petitioner has taken voluntary registration under Sub Section (3) of Section 25, but has not commenced the business within six months from the date of such registration. Now the only provision which remains and empowers the respondent to cancel the registration is indulgence in fraud, willful misstatement or suppression of facts. Unfortunately, this is also not the case sought to be made out by the proper officer in the show cause notice at Ext.P5 or the impugned order at Ext.P8.

8. For better understanding of the matter, let us put on record the relevant portion of the show cause notice making out and

conveying the case of the department to the petitioner for soliciting his reply. The relevant portion of the show cause notice (Ext.P5) reads thus:-

"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. As per the intelligence squad report your business place is situated in the first floor of the three storied building which is partially completed with structure only and no building number affixed by the local authority.

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

It is thus clear that the allegation levelled against the petitioner by the respondent department is to the effect that business place is situated in a building which is partially completed with structure only and no building number is affixed by the local authority.

9. Now let us put on record the reason mentioned in the order for cancellation of registration dated 29.09.2020 (Ext.P8), which reads thus:-

"1. As per the new registration case verification report submitted by the inspector of this office dated 14/10/2020 and also the report of ASTO, Squad2, Intelligence wing, Kottayam at Pala dated 11.08.2020, it is observed that F R TRADE LINKS, 6/580-E, THEKKEMURANJOOR BUILDING, ERATTUPETTA - VAGAMON ROAD, ERATTUPETTA, Kottayam, Kerala, 686 121 with GSTIN 32CMEPR0466B1ZG is not functioning in the address given in the registration application at the time of registration. They also reported that, the business place is situated in the first floor of the three storied building which is partially

completed with structures only. Said business place is an open space in pillars, having no partition walls or shutter. No building number is seen affixed by the local authority and no stock in the business premises. There is only a banner with phone number & GSTIN in the wall of three storied building. In the circumstances your contention against the SCN issued on 29/09/2020 is not acceptable. Hence the registration is canceled U/s.29(2) of the CGST/SGST Act 2017."

10. It is thus clear that in consonance with the allegation levelled in the show cause notice, the impugned order is passed for the reason that the business place is situated in a building which is partially completed with structures only and no building number is affixed by the local authority. Even otherwise, the respondent department cannot go beyond the show cause notice issued by it to the petitioner, requiring the petitioner to defend the case against him as conveyed to him in the show cause notice. Thus, this Court will have to examine whether the reasons stated in the show cause notice, which is reproduced in the foregoing paragraph, can be construed as reason for cancellation of registration as per provisions of Sub Section (2) of Section 29 of the CGST Act, 2017. The answer to this question is found to be in negative, because Sub section (2) of Section 29 does not envisage the contingency of situation of place of business in a partially completed building having no building number affixed on it by the local authority. Such is not the reason as contemplated by Sub section (2) of Section 29, authorising the

proper person to cancel the registration of a person in exercise of the powers conferred by the relevant provision of the statute. Consequently, the impugned order at Ext.P8 cannot stand in the scrutiny of law. Consequently, the order of rejection of application for revocation of cancellation is also illegal and cannot stand in the scrutiny of law.

11. At this juncture, it is apposite to take note of Rule 25 of the CGST/SGST Rules. According to the provision of this Rule, where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before grant of registration, or due to any other reason after the grant of registration, the proper officer may get verification of the place of business, in the presence of the said person, done. Thereafter, the verification report along with the other documents, including photographs, are required to be uploaded in FORM GST REG 30 on the common portal within a period of fifteen working days following the date of such verification.

12. In the case in hand, the State Tax Officer, Pala is the proper

officer for assessment and he is a competent officer to invoke provisions of Rule 25. The State Tax Officer, Pala is also the registering authority of the petitioner. This officer has issued a notice to cancel the registration of the petitioner in FORM GST REG 17, based on the report of the intelligence officer. It is clear that the State Tax Officer, Pala has himself did not conduct any enquiry as contemplated in Rule 25. He proceeded further to cancel registration, despite the fact that the petitioner was aggrieved by the report of the intelligence officer as seen from the reply tendered by the petitioner. The proper officer, as such, ought not to have proceeded ahead with cancellation of the registration on the basis of report of the intelligence officer. The proper officer ought to have independently assessed the situation, particularly, when the petitioner had produced the receipt of the building tax from the local authority (Ext.P3) to prove the authenticity of his stand. This seems to have been not done by the proper officer. Without considering this document at Ext.P3, the registering authority had cancelled the registration. The application for revocation of cancellation of registration is also rejected by the respondent without proper enquiry in the matter.

In the result, the writ petition is allowed. The impugned orders at Exts.P8 and P12 are quashed and set aside. Consequently, the respondents are directed to restore the registration of the petitioner.

Sd/-

A.M.BADAR

JUDGE

ajt

APPENDIX OF WP(C) 28917/2020

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE GST REGISTRATION
CERTIFICATE ISSUED TO THE PETITIONER DATED
08/07/2020.
- EXHIBIT P2 A TRUE COPY OF THE LEASE DEED DATED
16/06/2020.
- EXHIBIT P3 A TRUE COPY OF THE PROPERTY TAX RECEIPT DATED
16/06/2020.
- EXHIBIT P4 A TRUE COPY OF THE TRADE LICENSE GRANTED TO
THE PETITIONER BY THE ERATTUPETTA MUNICIPALITY
DATED 01/07/2020.
- EXHIBIT P5 A TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY
THE 1ST RESPONDENT DATED 29/09/2020.
- EXHIBIT P6 A TRUE COPY OF THE REPLY DATED 03/10/2020.
- EXHIBIT P7 A TRUE COPY OF THE LEASE DEED DATED
24/11/2020.
- EXHIBIT P8 A TRUE COPY OF THE ORDER FOR CANCELLATION OF
REGISTRATION PASSED BY THE 1ST RESPONDENT
DATED 02/11/2020.
- EXHIBIT P9 A TRUE COPY F THE FORM GST REG-21 DATED
04/11/2020.
- EXHIBIT P10 A TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY
THE 1ST RESPONDENT IN FORM GST REG-23 DATED
03/12/2020.
- EXHIBIT P11 A TRUE COPY OF THE REPLY FILED BY THE
PETITIONER AGAINST EXT.P10 SHOW CAUSE NOTICE

DATED 04/12/2020.

- EXHIBIT P12 A TRUE COPY OF THE ORDER OF REJECTION OF APPLICATION FOR REVOCATION OF CANCELLATION OF REGISTRATION PASSED BY THE 1ST RESPONDENT DATED 14/12/2020.
- EXHIBIT P13 A TRUE COPY OF PHOTOGRAPH TAKEN FROM THE ORIGINAL BUSIENSS PLACE IN ERATTUPETTA VILLAGE ON 23.11.2020
- EXHIBIT P13(a) A TRUE COPY OF PHOTOGRAPH TAKEN FROM THE ORIGINAL BUSIENSS PLACE IN ERATTUPETTA VILLAGE ON 23.11.2020 ALONG WITH ENGLISH TRANSLATION
- EXHIBIT P14 A TRUE COPY OF PHOTOGRAPH TAKEN FROM THE NEW BUSINESS PLACE IN THEEKOY VILLAGE
- EXHIBIT P14(a) A TRUE COPY OF PHOTOGRAPH TAKEN FROM THE NEW BUSINESS PLACE IN THEEKOY VILLAGE
- EXHIBIT P14(b) A TRUE COPY OF PHOTOGRAPH TAKEN FROM THE NEW BUSINESS PLACE IN THEEKOY VILLAGE
- EXHIBIT P14(c) A TRUE COPY OF PHOTOGRAPH TAKEN FROM THE NEW BUSINESS PLACE IN THEEKOY VILLAGE
- EXHIBIT P14(d) A TRUE COPY OF PHOTOGRAPH TAKEN FROM THE NEW BUSINESS PLACE IN THEEKOY VILLAGE
- EXHIBIT P14(e) A TRUE COPY OF PHOTOGRAPH TAKEN FROM THE NEW BUSINESS PLACE IN THEEKOY VILLAGE
- EXHIBIT P14(f) A TRUE COPY OF PHOTOGRAPH TAKEN FROM THE NEW BUSINESS PLACE IN THEEKOY VILLAGE ALONG WITH ENGLISH TRANSLATION.
- EXHIBIT P15 A TRUE COPY OF THE TRADE LICENSE DATED 24.12.2020 ISSUED BY THE THEEKOY GRAMA PANCHAYAT ALONG WITH ENGLISH TRANSLATION

EXHIBIT P16 A TRUE COPY OF THE JUDGMENT IN [2002] 10 KTR
192 (Ker)

Exhibit P17 TRUE COPY OF THE APPLICATION FOR REGISTRATION
FILED ON LINE BY THE PETITIONER (AS AVAILABLE
FROM THE GST PORTAL NOW0

Exhibit P18 TRUE COPY OF THE NOTICE DATED 25/06/2020
ISSUED BY THE 1ST RESPONDENT DIRECTING TO
PRODUCE LICENCE FROM THE LOCAL AUTHORITY

Exhibit P19 TRUE COPY OF THE CIRCULAR NO. 19/2018 ISSUED
BY THE 4TH RESPONDENT NO. CT/11804/2018-CL
DATED 07/09/2018

Exhibit P19(a) TRUE COPY OF THE CIRCULAR NO. 04/2019 ISSUED
BY THE 4TH RESPONDENT IN CT/1267/2019-CQ DATED
07/05/2019

Exhibit P19(b) TRUE COPY OF THE CIRCULAR NO. 05/2020 ISSUED
BY THE 4TH RESPONDENT