

Court No. - 50

Case :- WRIT TAX No. - 638 of 2020

Petitioner :- Vidyut Majdoor Kalyan Samiti

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Praveen Kumar

Counsel for Respondent :- C.S.C.,A.S.G.I.

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Prakash Padia,J.

Heard Shri Praveen Kumar, learned counsel for the petitioner, Shri Amit Manohar, learned counsel for the respondents 1, 2 and 4 and Shri Naresh Chandra Gupta for the respondent no. 3.

The facts of the case are that the petitioner, a registered society represented by Shri Ajay Kumar Sharma before this Court, obtained a GST registration.

It appears that since the petitioner failed to file monthly returns (GSTR-3B) for more than six months for the period from October to March in assessment year 2018-19 and from April to June in assessment year 2019-20 as required under the Goods and Service Tax Act, 2017, a show cause notice was uploaded on the GST Portal on 22.08.2019 granting seven days time to the petitioner to show cause.

It is stated that during this period of seven days, the petitioner never visit the portal and, therefore, was not able to reply to the show cause notice. As a consequence vide order dated 02.09.2019, the GST registration of the petitioner was cancelled.

The order dated 02.09.2019, has been set aside in appeal by the Additional Commissioner, Grade-02 (Appeal)-I, Commercial Tax, Bareilly. The appellate order restored petitioner's GST registration with effect from 02.09.2019.

The petitioner is aggrieved as this order has not been implemented on the GST Portal and the portal insofar as the petitioner is concerned is inactive. It is in this context that the following reliefs have been sought in the writ petition:-

(I) Issue a writ, order or direction, in the nature of mandamus commanding the respondent No. 4 to restore the registration certificate of the petitioner to its original number in compliance of order dated 30.01.2020 passed by the Additional Commissioner, Grade-02 (Appeal)-I,

Commercial Tax, Bareilly.

(II) Issue a writ, order or direction, in the nature of mandamus commanding the GST Network to restore the active status on the dashboard of the petitioner on the GST Portal and make all the tabs on the portal active in compliance of the order dated 30.01.2020 passed by Additional Commissioner, Grade-02 (Appeal)-I, Commercial Tax, Bareilly.

(III) Issue a writ, order or direction, in the nature of mandamus commanding the GST Network to design its portal and rectify the defects on the portal in compliance with the GST Act and the Rules."

Initially, counsel appearing for the respondents 1, 2 and 4 and counsel representing the respondent no. 3 tried to argue that restoration of the GST registration is the responsibility of the other. Ultimately, it was also submitted that the petitioner should submit a fresh application and obtain a GST registration online.

Subsequently, a counter affidavit has been filed on behalf of the respondents 1, 2 and 4, wherein it is sought to be conveyed that once petitioner's registration was cancelled, an application for its revocation should have been filed in form GST-REG-12. The averments in this regard found in paragraph 7 of the counter affidavit are reproduced:-

*"7. That further Rule 23(1) of GST Act, 2017 contemplates that a registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in **FORM GST REG-12**, to such proper officer, within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

Provided that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.

Provided further that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration.

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration."

It has also been averred in paragraph 8 that the petitioner is required to furnish details of old returns, tax, interest or penal interest along with his revocation application, which has not been done.

The contention therefore, is that there can be no manual restoration of the GST registration and, therefore, the writ petitioner is liable to be dismissed. It is also the import of the counter affidavit that the petitioner wrongly assailed the registration cancellation before the Additional Commissioner without applying for its revocation on the portal.

Despite the arguments above, on a pointed query by the Court, counsel for the respondents have not been able to show that the order passed by the Commissioner, restoring petitioner's GST registration, is either illegal or without jurisdiction. The same in any case, is a judicial order and the respondents cannot take a plea that they shall not comply with an order passed by a competent authority.

In case, the submissions of learned counsel for the respondents are accepted, the same in our considered opinion, will amount to travesty of justice. The contention that there is no provision of restoration of a GST registration, once it has been cancelled borders on the absurd. In case, no provision for its restoration has been made in the software, the same is not the fault of the petitioner and it is for the department and the respondents to make provisions for the same in the software and on the GST Portal. Merely because such provision has not been made, the petitioner cannot be made to suffer and non compliance of an appellate order, passed by a competent appellate authority cannot be accepted or permitted on the plea raised in the counter affidavit or during the course of arguments.

Accordingly, the writ petition is liable to be and is hereby, allowed. The respondents are directed to restore petitioner's GST registration on the GST Portal, forthwith not later than ten days from the date a copy of this order is filed before them.

All the respondents are directed to cooperate amongst themselves to ensure compliance of this order.

Order Date :- 18.1.2021

Mayank