

2022 (3) TMI 493 - ALLAHABAD HIGH COURT

APPARENT MARKETING PRIVATE LIMITED. VERSUS STATE OF U.P. AND 3 OTHERS

Writ Tax No. - 348 of 2021

Dated: - 5-3-2022

Revocation of cancellation of Registration - bogus firm or not - failure to appear for personal hearing on the appointed date and time - violation of principle of natural justice - HELD THAT:- In the first place, cancellation of registration has serious consequences. It takes away the fundamental right of a citizen etc. to engage in a lawful business activity. In the present case, undisputedly, the registration claimed by the assessee had been granted by the respondent authority. Therefore, a presumption does exist as to such registration having been granted upon due verification of necessary facts. If the respondent proposed to cancel the registration thus granted, a heavy burden lay on the respondent authority to establish the existence of facts as may allow for such cancellation of registration.

Therefore, the registration once granted could be cancelled only if one of the five statutory conditions was found present. *Per se*, no registration may be cancelled by merely describing the firm that had obtained it, was "bogus". The word "bogus" has not been used by the statute. The only contingency to which such expression may relate may be one appearing under Clauses (c) and (d) of Section 29(2) of the Act being where a registered firm does not commence its business within six months of its registration. Other than that, the term "bogus" may also refer to a satisfaction contemplated by Section 29(2)(c) of the Act where registration may be cancelled if the registered firm has not furnished its return for continuous period of six months. Those conditions have not been shown to exist in this case - Registration having been granted earlier, the obligation existed on the authority to specify the exact reason/charge on which it proposed to cancel the registration. In the present case, unless the respondent authority had first specified the reason why it proposed to cancel the registration and unless the authority had specified the reason why it was attempting to treat the assessee firm "bogus" i.e. whether reference was being made to Section 29(2)(c) or Section 29(2)(d) of the Act, by specifically stating the facts as may give rise to that charge and unless the supporting material giving rise to that charge had been referred to in that notice, the notice itself remained defective in material aspect.

In the present case, by merely describing the assessee firm "bogus", the respondent authority did not make known to the assessee the exact charge that was being levelled against the assessee. Correspondingly, the respondent authority deprived the assessee of the necessary opportunity to rebut the charge - It is equally remarkable to note that the Appeal Authority also chose to consider the matter on merits. Though the appeal is a continuation of original proceedings and it may have been open to the Appeal Authority to hear and decide the matter on merits, however, in absence of any legally

permissible reason given by the original authority, the only proper course the Appeal Authority may have adopted, may have been to set aside the orders dated 13.08.2020 and 21.08.2020.

Petition allowed.

Judgment / Order

Hon'ble Saumitra Dayal Singh, J.

For the Petitioner : Praveen Kumar

For the Respondent : C.S.C.

ORDER

HON'BLE SAUMITRA DAYAL SINGH, J.

1. Heard Sri Praveen Kumar, learned counsel for the petitioner-assessee and Sri Jagdish Mishra, learned Standing Counsel for the revenue.

2. Present writ petition has been filed by the assessee to assail the order dated 12.02.2021 passed by the Appeal Authority in Appeal No. GST/994/2020 for A.Y. 2020-21 and the orders dated 21.08.2020 and 13.08.2020 passed by the Assistant Commissioner, Sector-14, State Tax, Ghaziabad.

3. In short, the assessee applied for and was granted registration under the UP GST Act, 2017 (hereinafter referred to as the 'Act') w.e.f. 17.08.2017 for trading in Pan Masala and Tobacco. The assessee claims to have filed its return on time and it also claims to have deposited the due tax. A survey was conducted at the assessee's business premises on 15.12.2017. Those premises were found closed. Another survey was conducted at the assessee's business premises on 16.02.2018. However, no adverse material is claimed to have been discovered during that survey proceedings. Besides the above two survey, the assessee claims to have cooperated in certain proceedings against a third party where under it had been summoned under Section 70 of the Act.

4. In the above background, the assessee received a notice through eportal of the revenue department on 22.07.2020 issued under Section 29 of the Act whereby the registration granted to the assessee under the Act was proposed to be cancelled for the following solitary reason :

“Your firm was found bogus in inspection of SIB. Information received from headquarter.”

5. The assessee was required to furnish its reply within seven working days and to appear before that authority on 24.07.2020 at 11:00 a.m. Undeniably, the assessee did not make compliance of the aforesaid notice. However, no order was passed on 24.07.2020. Also, no further notice was issued to the assessee in that proceeding. On 13.08.2020, the respondent authority cancelled the assessee's registration without disclosing any further reason. The relevant extract of the order reads as below :

“Order for Cancellation of Registration

This has reference to your reply dated 31/07/2020 in response to the notice to show cause dated 22/07/2020;

Whereas no reply to notice to show cause has been submitted;

Whereas the undersigned has examined your reply and submissions made at the time of hearing and is of the opinion that your registration is liable to be cancelled for following reason(s).

1. No Reply about SCN that Your firm was found bogus in inspection of SIB. Information received from headquarter.

The effective date of cancellation of your registration is 13/08/2020”

6. Being aggrieved, the assessee filed an application for revocation of the aforesaid order (under Section 30 of the Act). In response to the above, the assessee received a notice dated 21.08.2020 expressing the tentative opinion of the authority against the grant of revocation. In any case, it required the assessee to furnish its reply to the unspecified notice within seven working days. It was further indicated, upon failure to furnish reply and upon failure to appear for personal hearing on the appointed date and time, the case could be decided *ex parte*. Remarkably, no date or time was fixed for personal appearance/hearing. In any case, the assessee uploaded its written reply on 21.08.2020 itself. Without issuing any further communication and without fixing any date for personal hearing, on 21.08.2020 itself, the respondent authority passed the order, rejecting the application for revocation of cancellation of registration. That order reads as below :

“Order of Rejection of Application for Revocation of Cancellation

This has reference to your reply filed vide ARN AA0908200548721 dated 17/08/2020. The reply has been examined and the same has not been found to be satisfactory for the following reasons:

- 1. Reason for revocation of cancellation – Others (Please specify) – Your firm was found bogus in inspection of SIB. Information received from headquarter.*
- 2. Reject due to Reply has not been found satisfactory.*

Therefore, your application is rejected in accordance with the provisions of the Act.”

7. Being further aggrieved, the assessee challenged the aforesaid order in appeal. That appeal has also been dismissed. Strangely, the Appeal Authority has chosen to refer to the material now relied upon by the Revenue Authority in the shape of survey report dated 15.12.2017.

8. Submission of learned counsel for the assessee is, there is gross violation of principles of natural justice on more than one count. In the first place, though the assessee may have failed to furnish its reply to the first notice dated 22.07.2020, no date was fixed in the proceedings and no date (of personal hearing) was communicated to the assessee before the order dated 13.08.2020 came to be passed. In any case, upon application for revocation of cancellation filed, the respondent authority was obligated to fix a date and time to hear the assessee. Mention of such a direction is also contained in the notice dated 21.08.2020. However, as has been noted above, no date or time was fixed for personal appearance of the assessee.

9. As to the second violation of principle of natural justice, it has been submitted, the original show cause notice dated 22.07.2020; the order dated 13.08.2020; notice dated 21.08.2020 and; the further order dated 20.08.2020 are, non-speaking. Neither at the stage of show cause notice, any reason permitted by the statute was mentioned or specified in that notice nor the assessee was confronted

with any adverse material to reach the conclusion drawn by the respondent authority to cancel the assessee's registration. A mechanical exercise has been offered by the respondent authority and the registration of the assessee cancelled by merely describing it as "bogus".

10. Elaborating his submission, it has been further submitted, the cancellation of registration can arise only in the event of existence of any of the five statutory conditions enumerated under Section 29(2) of the Act. Firm being "bogus" is not one of the conditions on which such notice may arise. In face of statutory returns having been filed and tax having been regularly paid, the revenue authorities could not have cancelled the registration of the assessee by describing it as "bogus" without specifying the exact nature of charge and without confronting the assessee with the exact material in support of such charge. Next, it has been submitted, the Appeal Authority has completely erred in proceeding to consider the proceeding on merits by recording its own reason in support of the order of cancellation of registration though no such reason exists or has been recorded in the orders passed by the original authority dated 13.08.2020 and 21.08.2020. Last, it has been submitted, the fact reasons noted by the Appeal Authority are patently false. If the assessee had been confronted with the adverse material, it would have furnished its reply to establish the correct facts.

11. On the other hand, opposing the writ petition, learned Standing Counsel would submit, there is enough adverse material against the assessee to establish that it was a completely "bogus" firm. It had not conducted any business as disclosed. The registration had been obtained only for the purposes of creating a false paper trail of invoices. Also, it has been submitted, the assessee did not furnish any reply to the notice dated 13.08.2020 though it was aware of the correct facts with respect to the survey conducted at its business premises. Hence, there is no error in the order passed by the Appeal Authority.

12. Having heard learned counsel for the parties and having perused the record, in the first place, cancellation of registration has serious consequences. It takes away the fundamental right of a citizen etc. to engage in a lawful business activity. In the present case, undisputedly, the registration claimed by the assessee had been granted by the respondent authority. Therefore, a presumption does exist as to such registration having been granted upon due verification of necessary facts. If the respondent proposed to cancel the registration thus granted, a heavy burden lay on the respondent authority to establish the existence of facts as may allow for such cancellation of registration. Section 29(2) of the Act reads as below :

"Section 29. Cancellation of suspension of registration

(1) ...

(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 there under 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 subsection (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.]”

13. Therefore, the registration once granted could be cancelled only if one of the five statutory conditions was found present. *Per se*, no registration may be cancelled by merely describing the firm that had obtained it, was “bogus”. The word “bogus” has not been used by the statute. The only contingency to which such expression may relate may be one appearing under Clauses (c) and (d) of Section 29(2) of the Act being where a registered firm does not commence its business within six months of its registration. Other than that, the term “bogus” may also refer to a satisfaction contemplated by Section 29(2)(c) of the Act where registration may be cancelled if the registered firm has not furnished its return for continuous period of six months. Those conditions have not been shown to exist in this case.

14. Yet, in case the authority wanted to cancel the existing registration, it ought to have mentioned (in the show cause notice), if it proposed to cancel the registration for violation of Section 29(2)(c) of the Act or for violation of Section 29(2)(d) of the Act. It cannot be a matter of contemplation or option either with the authority or the assessee to find out for itself by any guesswork or exploratory exercise, if the case fell in any of the conditions of Section 29(2) of the Act.

15. Registration having been granted earlier, the obligation existed on the authority to specify the exact reason/charge on which it proposed to cancel the registration. In the present case, unless the respondent authority had first specified the reason why it proposed to cancel the registration and unless the authority had specified the reason why it was attempting to treat the assessee firm “bogus” i.e. whether reference was being made to Section 29(2)(c) or Section 29(2)(d) of the Act - by specifically stating the facts as may give rise to that charge and unless the supporting material giving rise to that charge had been referred to in that notice, the notice itself remained defective in material aspect.

16. Though the notice for cancellation of registration may not be placed on a high pedestal of a jurisdictional notice, at the same time, unless the essential ingredients necessary for issuance of such notice had been specified therein at the initial stage itself, the authorities cannot be permitted to have margin or option to specify and/or improve the charge later.

17. In the present case, by merely describing the assessee firm “bogus”, the respondent authority did not make known to the assessee the exact charge that was being levelled against the assessee. Correspondingly, the respondent authority deprived the assessee of the necessary opportunity to rebut

the charge.

18. In view of the discussion made above, the charge levelled in the notice dated 22.07.2020 and as was reiterated in the order dated 13.08.2020 and the further notice dated 21.08.2020 are wholly, vague. Effectively, it prevented the assessee to rebut the same. The statute contemplates issuance of the notice in specified circumstances for specific grounds. Those could not be diluted or muddled or made vague by describing the assessee firm as "bogus". In absence of any specific charge, the respondent authority could not be permitted to proceed to cancel the assessee's registration. Though it may remain open to the Assessing Authority to issue a fresh notice with exact charge specification, the proceedings arising from the impugned notice is inherently defective.

19. Moreover, it is also unacceptable that the Assessing Authority did not pass any order on 24.07.2020, the date fixed in the notice dated 22.07.2020 but chose to pass an order on 13.08.2020 without issuing any further notice. Though it may have been open to the Assessing Authority to pass an order on 24.07.2020 but having failed to do so, it became obligated, to issue a further notice for the date 13.08.2020. Even if that mistake is to be overlooked (since the assessee had failed to furnish its reply at that stage), it cannot be overlooked that in the proceedings for revocation of cancellation of registration, the respondent authority issued a notice dated 21.08.2020 requiring the assessee to file its reply within seven working days and to appear before that authority on the appointed date and time. Though that recital is contained in the notice dated 21.08.2020, at the same time, there is no description of the date and time fixed for personal hearing. In fact, upon submission of reply on 21.08.2020, the respondent authority proceeded to pass the order on the same date without giving any opportunity of personal hearing to the assessee.

20. Remarkably, despite reply having been furnished by the assessee, the order dated 21.08.2020 is as vague and defective as the initial notice inasmuch as, only reason given in that order is that the assessee firm is "bogus". No discussion has been made of the reply furnished by the assessee and no reason has been given why the *ex parte* order dated 13.08.2020 has not been recalled.

21. In the above facts, it is equally remarkable to note that the Appeal Authority also chose to consider the matter on merits. Though the appeal is a continuation of original proceedings and it may have been open to the Appeal Authority to hear and decide the matter on merits, however, in absence of any legally permissible reason given by the original authority, the only proper course the Appeal Authority may have adopted, may have been to set aside the orders dated 13.08.2020 and 21.08.2020. Unless the Appeal Authority had corrected that error of the original authority especially in matters of procedure, such mistakes are liable to be repeated affecting numerous citizens/assesseees.

22. For the reasons noted above, the orders dated 12.02.2021, 21.08.2020 and 13.08.2020 cannot be sustained. They are set aside. Accordingly, the present writ petition succeeds and is **allowed**. It is left open to the respondent authority to issue a fresh notice on any specified ground mentioned under Section 29(2) of the Act. That proceeding, if initiated, may be decided on its own merit, without being prejudiced by any observation made in this order. No order as to costs.

23. Let a copy of this order be communicated to the Commissioner, State Tax, U.P. Lucknow by the learned Standing Counsel for effective communication and appropriate action so that such cases do not arise in future.

