



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 1ST DAY OF AUGUST 2023/10TH SRAVANA, 1945

WP(C) NO. 41275 OF 2022

PETITIONER:

M/S.AJIT ASSOCIATES ARCHITECTURAL CONSULTANTS PVT. LTD.
IIIIRD FLOOR, 483 K/40, PUTHURAN PLAZA, M.G. ROAD, KPCC
JUNCTION, ERNAKULAM, PIN - 682011
REPRESENTED BY ITS MANAGING DIRECTOR, B.R. AJIT.

BY ADVS.

SRI HARISANKAR V. MENON
SMT.MEERA V.MENON
SRI R.SREEJITH
SMT.K.KRISHNA

RESPONDENT:

- 1 ASSISTANT COMMISSIONER
SECOND CIRCLE, STATE GST DEPARTMENT,
ERNAKULAM, PIN - 682018
- 2 JOINT COMMISSIONER (APPEALS)
STATE GST DEPARTMENT, ERNAKULAM,
PIN - 682018
- 3 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPT., GOVT. SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001
- 4 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY OF
FINANCE (DEPARTMENT OF REVENUE),
NORTH BLOCK, NEW DELHI,
PIN - 110001
DR.THUSHARA JAMES, SENIOR GOVT.PLEADER
SRI S.MANU, DSGI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
31.3.203, THE COURT ON 01.08.2023 DELIVERED THE FOLLOWING:

**T.R. RAVI, J.**-----
W.P.(C)No.41275 of 2022
-----Dated this the 1st day of August, 2023**JUDGMENT**

The petitioner is a Private Limited Company engaged in providing architectural services. It is an assessee under the Goods and Service Tax Act (GST Act for short). They have been filing their returns and paying the tax regularly till August,2017. Thereafter, there has been a default in the filing of returns, which according to the petitioner, was not wilful. It is stated that by 2022 the petitioner started taking steps to regularise the returns by filing the defaulted returns, and at that stage it was realised that the registration under the statute had been cancelled during the year 2021 pursuant to a show cause notice issued in 2017. Ext.P1 is the show cause notice dated 05.12.2019. Ext.P2 is the order cancelling the registration, which was dated 14.12.2020. It is submitted that even though Ext.P1 had been served on the company, the concerned accountant who was dealing with the filing of returns did not bring it to the notice of the management and did not file an effective reply to the show cause. It is stated that the petitioner



has since filed returns of the defaulted periods from August 2017 onwards and that the returns have been regularised till February 2021. The petitioner submits that they had filed an appeal against Ext.P2 order of cancellation registration before the 2nd respondent, for which there was a delay of 230 days and an application for condonation of delay has also been filed.

2. In this writ petition, the petitioner challenges Ext.P2 order on the ground that it has been issued without providing an opportunity for a hearing. Section 29(2) of the Act reads thus:

"S.29(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 return 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, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard".

3. As per the proviso, "the proper Officer shall not cancel the registration without giving a person an opportunity of being heard." It is contended that the hearing is to be carried out by the proper Officer and that since the Statute uses the words "may cancel," it necessarily gives an element of discretion to the proper officer. It is stated that Ext.P1 show cause notice was issued way back on 05.12.2019 by the then assessing authority Smt.P.R.Seema, and Ext.P2 order has been issued by the succeeding incumbent Smt.T.A.Omana. The contention is that the succeeding officer, who is the proper officer, has not issued notice to the petitioner or heard them. It is further submitted that what is required is the satisfaction of the officer concerned in order to exercise the discretion to cancel or to not cancel the registration, and hence the person who is passing the order necessarily has to hear the petitioner to arrive at a satisfaction. Another contention taken is that Ext.P2 does not contain the Document Identification Number (DIN). It is submitted that



going by the Circular issued by the 4th respondent, with effect from 24.12.2019, every order shall contain a DIN, and Ext.P2 was hence invalid. Another contention stated is that it can be seen from Ext.P3 that the petitioner has submitted the defaulted returns, and the cancellation of registration is not required.

4. Heard Sri.Harisankar V. Menon, counsel for the petitioner and Dr.Thushara James, Sr. Government Pleader.

5. The counsel for the petitioner relied on the decision of the Full Bench of the Patna High Court in **Commissioner of Wealth-tax v. Sri Jagdish Prasad Choudhary [1995 Vol 211 ITR 472]**, the judgment of the Calcutta High Court in **Commissioner of Income-tax, West Bengal-IV v. Chitra Mukherjee [1981 Vol 127 ITR 252]**, the judgment of the Andhra Pradesh High Court in **Commissioner of Wealth Tax, A.P. v. Azizunnissa Begum [1979 Vol 119 ITR 376]** and the judgment of the Andhra Pradesh High Court in **Anantha Naganna Chetty v. The Commissioner of Income Tax, Andhra Pradesh, Hydrabad [AIR 1970 AP 367]** in support of the contention that the succeeding officer was bound to give an opportunity of hearing to the assessee before cancelling the registration.



6. A counter affidavit has been filed by the 1st respondent. It is contended that a separate notice affording an opportunity is not required in the case of a change of officer. It is also contended that alternate remedies are available.

7. In the case on hand, admittedly, there has been no hearing by the Officer who issued Ext.P2 order. Nor was the petitioner put on notice about such an order being proposed. The contention of the respondents is that the law only requires a grant of sufficient opportunity, and the petitioner had been put on notice, but he did not choose to give any response. It is hence submitted that since the petitioner Company did not take the opportunity of hearing, they cannot be heard to say that there is a violation of the procedure.

8. In **Anantha Naganna (supra)**, the Court was considering a case of levy of penalty under the Income-tax Act. That was a case where there was a change of the Income-tax Officer regarding which the assessee had no intimation. The provision of law which was considered was Section 28(3), which read as follows;

"S.28(3). No order shall be made under sub-section 910 or sub-section 920 unless the assessee or partner, as the case may be, has been heard, or had been given



a reasonable opportunity of being heard.”

Considering the said provision, the Court held that it is obligatory on the part of the authorities imposing a penalty to hear and give a reasonable opportunity to the assessee before an order imposing penalty is passed. Regarding the question of whether the succeeding Officer should hear the assessee, Section 5(7)(c) of the Act contains a specific provision that if an Income-tax Authority is succeeded by another authority, the succeeding authority may continue the proceeding from the stage where it was left by his predecessor. It also says that the assessee, in such cases, can demand that the previous proceeding or any part thereof conducted by the predecessor be re-opened before the succeeding Officer decides to continue the proceedings from the stage at which it was left by the predecessor or ask for a rehearing. The Court, after taking note of Section 28 and Section 5(7)(c), held that unless the assessee is put on notice regarding the change of Officer, he does not even get an opportunity to demand a re-hearing or re-opening. It was hence found that it is inherent in such circumstances that the succeeding Officer should inform the assessee about the proposal to continue the proceedings.

9. In **Chitra Mukherjee (supra)**, the Calcutta High



Court referred to **Anantha Naganna (supra)** again in a case arising out of the Income-tax Act and concurred with the view and held that the assessee had to be given an opportunity of being heard by the succeeding Officer. Similar is the view taken in **Azisunnissa (supra)**, which arose under the Wealth Tax Act. A Division Bench of this Court in **Commissioner of Income-tax v. M.Sreedharan [1991 (190) ITR 604]** followed the judgments **Anantha Naganna (supra)** and **Chitra Mukherjee (supra)** and held that the succeeding Officer has to intimate the assessee of his intention to continue the proceedings from the stage at which it was left by his predecessor. Later, a Full Bench of the Patna High Court in **Jagdish Prasad Choudhary (supra)** approved the above said Division Bench judgments and took the same view.

10. The statutory provision in the case on hand is a little different. In the cases referred to above, which arose under the Wealth Tax Act and Income-tax Act, the emphasis was only on the opportunity of being heard to be given to the assessee before an order of penalty is issued under Section 28(3) of the Income Tax Act. Under Section 29(2) of the GST Act, the proviso also mentions that the proper Officer shall not cancel the



registration without giving an opportunity of being heard, which is in the nature of an embargo on the officer. The requirement that the succeeding Officer should put the assessee on notice is thus better emphasised by the usage of the words "proper Officer" in the proviso to Section 29(2). The necessary implication is that the proper officer has to hear the concerned person before cancelling the registration, which would mean that the assessee is put on notice by the succeeding officer also.

In view of the law laid down in the aforesaid decisions, with which I am in respectful agreement, the petitioner is entitled to relief in this writ petition. The writ petition is allowed. Ext.P2 order is quashed. As the petitioner has already submitted returns for the periods of default, necessary orders shall be issued by the respondents, treating the petitioners' registration as not cancelled.

Sd/-
T.R. RAVI
JUDGE



APPENDIX OF WP(C) 41275/2022

PETITIONER EXHIBITS

- Exhibit P1 COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT DTD. 05-12-2019
- Exhibit P2 COPY OF ORDER ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DTD. 14-12-2021
- Exhibit P3 COPY OF THE STATEMENT OF THE VARIOUS RETURNS FILED BY THE PETITIONER DTD. NIL
- Exhibit P4 COPY OF CIRCULAR NO. 128/47/2019-GST ISSUED BY THE 4TH RESPONDENT DTD. 23-12-2019
- Exhibit P5 COPY OF ORDER IN WPC NO. 320/2022 OF THE HON'BLE SUPREME COURT OF INDIA DTD. 18-07-2022
- Exhibit P6 COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DTD. 13-12-2022