(2014) 01 GUJ CK 0079

In the Gujarat High Court

Case No : Special Civil Application No. 16718 of 2013

Mohammed Abbas APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 23-01-2014

Acts Referred:
Gujarat Value Added Tax Act, 2003 — Section 27

Citation : (2014) 71 VST 167

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : M.G. Shaikh and I.A. Patel, Advocate for the Appellant; Jaimin Gandhi, Additional Government Pleader, Advocate for the Respondent

Judgement

Akil Abdul Hamid Kureshi, J.—Heard learned counsel for the parties for final disposal of the petition. The petitioner has challenged order dated January 24, 2013 passed by the Assistant Commissioner of Commercial Tax, Bhavnagar, by which registration of the petitioner under the Gujarat Value Added Tax Act, 2003 ("the Act", for short) came to be cancelled from inception.

2. Briefly stated, facts are that the petitioner applied for registration and TIN number to the State authorities under the Act on or around 22nd December, 2012. The case of the petitioner is that he was also granted provisional registration in terms of the provisions contained in the said Act and the Rules made thereunder. However, subsequently, by the impugned order, without granting any opportunity of hearing to the petitioner, such registration was cancelled ab initio.

3. The respondents contend that the petitioner was involved in a criminal case and details supplied by the petitioner were also not found accurate.

4. From the impugned order, we notice that the authority has placed heavy reliance on the detention of the petitioner in connection with a criminal case to come to the conclusion that in the interest of the Revenue, it is not desirable to

grant him registration. The petitioner has preferred an appeal before the Gujarat Value Added Tax Tribunal against the said order and the Tribunal has also dismissed the appeal of the petitioner by order dated March 13, 2013. Hence this petition.

5. Admittedly, such decision was taken without hearing the petitioner and without disclosing any grounds why the authority was inclined to cancel the registration ab initio.

6. The counsel for the petitioner vehemently contended that the provisional registration in terms of rule 5(16) of the Gujarat Value Added Tax Rules, 2006 ("the said Rules", for short) had become final. Such final registration can be cancelled only on the grounds contained in section 27 of the Act. Sub-section (5) (g) thereof provides for cancellation, if a dealer has been convicted of an offence under that Act or under the earlier law. Even in such a case, the Commissioner has to pass an order recording his reasons after giving the dealer an opportunity of being heard before cancelling the registration. He further submitted that the allegation that even the details supplied are doubtful is raised for the first time in the petition.

7. On the other hand, learned Additional Government Pleader Shri Gandhi for the respondents supported the order contending that in terms of rule 5(15) of the said Rules, it was open for the competent authority, if it was not satisfied with the details furnished by the dealer, to cancel the provisional registration number.

8. Prima facie, it does appear to be a case where provisional registration in terms of rule 5(16) of the said Rules was converted into a permanent registration. In such a case, only on the grounds mentioned in section 27 of the Act, such registration could be cancelled. Clause (g) of sub-section (5) of section 27 permits the authority to cancel such registration if the dealer is convicted of an offence under the said Act or the earlier law. Even in such a case, the Commissioner has to grant a hearing and pass an order recording his reasons for the same.

9. In the present case, no hearing was granted. The proposed grounds on which the Commissioner desired to rely for cancellation of registration, be it provisional or final, are never conveyed to the petitioner. In that view of the matter, we cannot uphold the said order. The impugned order dated January 21, 2013 of the Assistant Commissioner of Commercial Tax is therefore quashed. This is, however, without prejudice to the respondents to pass a fresh order in accordance with law after following the legal requirements. If such exercise is undertaken, it would be open for the petitioner to raise all contentions, including the grounds that unless and until the dealer is convicted and that too in an offence under the Act or the earlier law, the registration cannot be cancelled. We would not express any opinion on such contention being taken. The petition is disposed with the above observations and directions.