
(2021) 02 JH CK 0051

In the Jharkhand High Court

Case No : Writ Petition(T) No. 2661 Of 2020

M/s Turret Industrial Security Pvt. Ltd.

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 04-02-2021

Acts Referred:

Central Goods and Services Tax (CGST) Act 2017 — Section 29(2)(c), 79(1)(c)
Central Goods and Services Tax (CGST) Rules, 2017 — Rule 22(1), 22(2)

Citation : (2021) 02 JH CK 0051

Hon'ble Judges : Aparesh Kumar Singh, J;Anubha Rawat Choudhary, J

Bench : Division Bench

Advocate : Deepak Kumar Sinha, P.A.S. Pati, Ranjana Mukherjee

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner Mr. Deepak Kumar Sinha and Mr. P.A.S. Pati along with Ms. Ranjana Mukherjee, learned counsel for the respondent.

2. Petitioner has sought quashing of the ex parte order of cancellation of GST registration of the petitioner dated 13.03.2020 (Annexure-2) issued by respondent no. 4 â?" Superintendent,

Jamshedpur Urban, Bistupur North Range, on the ground that no opportunity was given to the petitioner. The GST registration has been cancelled on the ground of failure to file six monthly returns

from August, 2019 to January, 2020 by the petitioner within the prescribed time limit. According to the petitioner, it had filed GSTRâ?"I return for the period in question, but could not file GSTR-3B

returns due to non-payment of the outstanding dues from its clients, as their business were shut down.

Petitioner has prayed for a direction for revocation of the cancellation of registration of the petitioner to enable his clients to release the outstanding

payment. He has also sought direction upon the

respondents to accept his belated returns in GSTR-3B for the period in question and allow him to deposit the admitted tax in installment after receiving the outstanding amount from its clients.

Petitioner has also sought quashing of the letter dated 13.07.2020 (Annexure-5) issued by respondent no. 3 wherein his request for revocation of order of cancellation of GST registration has been

declined and he has been directed to clear the entire dues of tax liability along with interest and thereafter, only upon filing of GSTR- 3B, petitioner should contact the jurisdictional Assistant

Commissioner for revocation of the cancellation order. He has further asked for setting- aside the letter dated 17.07.2020 issued by respondent no. 4 asking him to pay GST liability of Rs.

1,82,01,863/- and interest Rs. 32,30,155/- within 15 days of the receipt of the letter , failing which coercive action shall be initiated under Section 79(1)(c) of the CGST Act, 2017.

3. Learned counsel for the petitioner submits by reference to Annexure1, the show cause notice for cancellation of registration issued in form GST REG-17 under Rule 22(1) dated 26.02.2020 that

it is no notice in the eye of law since no appointed date or time have been indicated therein for the petitioner to furnish a reply. Annexure- 2 is the order of cancellation of registration dated

13.03.2020 which again shows complete non-application of mind. It records that the undersigned has examined his reply and submissions made at the time of hearing and is of the opinion that his

registration is liable to be cancelled for the following reason(s). Thereafter, the order further records that assessee has not responded to the show-cause notice dated 26.02.2020, hence GST

registration is being cancelled effective from 13.03.2020. Learned counsel for the petitioner has further submitted that before the impugned order was passed on 13.03.2020, petitioner had filed

GSTR-3B return of August, 2019. As such, the order is also without jurisdiction since six monthsâ?? default in filing of GSTR-3B was not there at the time of passing of the order.

4. Petitioner had filed a belated reply vide Annexure- 3 on 18.03.2020 requesting the respondent not to cancel his GST registration so that he can file the GSTRâ??3B return upon receipt of

payments from his clients and to allow him to clear the pending GST liability for

the relevant period.

5. Learned counsel for the petitioner has placed reliance upon the decision of the Gujarat High Court in the case of *Mahadev Trading Company Vs. Union of India* passed in R/Special Civil

Application No. 11262 of 2020 dated 28.09.2020 reported in MANU/GJ/1395/2020. He submits that in exactly similar circumstances, the Hon'ble Gujarat High Court has been pleased to quash

the show-cause notice and the order of cancellation of registration. Therefore, the impugned order deserves to be quashed.

6. Learned counsel for the respondent has taken us to the contents of the counter-affidavit filed on their behalf. Though averments have been made that the cancellation of registration has not been

passed without personal hearing, but at the same time, it is averred that petitioner did not respond to the show-cause notice dated 26.02.2020. He did not file GSTR-3B return from August, 2019

to January, 2020. Petitioner deliberately did not respond or paid GST liability and interest. It is further the case of the respondents that under Rule 22(2) of the CGST Rule, 2017 read with Section

29(2)(c) of the CGST Act, 2017, a reply is to be filed in GST REG-18 to be submitted electronically. It is further contended that the petitioner has been a habitual defaulter between the period July,

2017 to February, 2020. Payment of GST liability in installments is not available under the G.S.T. laws. As per GSTR-I return filed from September, 2019 to July, 2020, the facility of I.T.C. to the

tune of Rs. 1,82,01,863/- have been passed on to the petitioner's clients, but self-declared liability has not been discharged. Therefore, interest of Rs. 32,30,155/- for delayed payment has also

been imposed. Repeated request letters were also sent to him on 17.02.2020 and 03.03.2020. It is stated that GST portal bars filing of return for belated period. Petitioner has been habitual

defaulter and should not be allowed to escape the liability for failing to file GSTR-3B returns in time.

7. Learned counsel for the respondent Mr. P.A.S. Pati has tried to explain the infirmity in the show-cause notice dated 26.02.2020 and also explain the observations recorded in the impugned order

dated 13.03.2020. Mr. Jitendra Kumar, Superintendent, CGST and Central Excise, Bistupur, North Range, Jamshedpur, -respondent No. 4 has also joined the proceedings pursuant to the order

dated 01.02.2021. He has pointed out that without giving the date and time, the required form GST Reg-17 under Rule 22(1) of the CGST Rules, 2017 is not generated. The officer is at the back

end and the show-cause notice is communicated through the GSTN portal to the assessee. He has tried to absolve his responsibility regarding the absence of any date and time in the show-cause

notice attributing it to technical error. The respondent has similarly in respect of the impugned order dated 13.03.2020 explained that the observation that, "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)" are system generated. The findings of the

respondent no. 4 are recorded therein at para 1 which clearly says that the assessee has not responded to the show-cause notice dated 26.02.2020 for cancellation of his GST registration on the

ground of his failure to file six monthly returns from August, 2019 to January, 2020, within prescribed time limit. The respondents have attributed technical error in the showcause notice and the

impugned order.

8. We have considered the submission of learned counsel for the parties and taken note of the relevant pleadings on record relied upon by them. The show-cause notice in Form GST REG "17

issued under Rule 22(1) on 26.02.2020 for cancellation of registration of the petitioner is extracted hereunder:

"Form GST REG-17

[See Rule 22(1)]

Reference Number: ZA2002200178745

THE PETITIONER HAS NOT RESPONDED TO THE SHOW-CAUSE NOTICE DATED 26.02.2020 FOR CANCELLATION OF HIS GST REGISTRATION ON THE

Date : 26/02/2020

To

TURRET INDUSTRIAL SECURITY PRIVATE LIMITED

43-A.J.C. ROAD, CONTRACTORS AREA, BISTUPUR, JAMSHEDPUR, Jharkhand, 831001

Show Cause Notice for Cancellation of Registration

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 Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months.

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

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on

merits.

Place : Jharkhand

Date : 26/02/2020

jitendra kumar Superintendent Jamshedpur Urban: Jamshedpur: Jharkhand??

9. Admittedly, no reply to the show-cause was filed by the petitioner. However, a perusal of the impugned order at Annexure- 2 dated 13.03.2020 shows the observation of the Superintendent,

CGST â?" respondent no. 4 that he has examined the reply and submissions made at the time of hearing by the assessee and is of the opinion that his registration is liable to be cancelled for the

following reasons. Thereafter, the order records that the assessee has not responded to the show-cause notice dated 26.02.2020 for cancellation of his GST registration on the ground of failure to

file six monthly returns from August, 2019 to January, 2020 within prescribed time limit. We do not intend to enter into the merits of the impugned order as the ingredients of a proper show-cause

notice as per the prescribed form GST REG-17 are completely absent. Petitioner could not furnish his reply as no date or time was indicated therein. As such, the cancellation of registration

resulting from such an incomplete show-cause notice also cannot be sustained being violative of principles of natural justice.

10. For the reasons recorded above, the impugned order of cancellation of registration dated 13.03.2020 (Annexure-2) is quashed. However, the respondent may proceed in accordance with law, if

the law permits.

11. Writ petition is allowed in the aforesaid terms.