

(2022) 02 GAU CK 0036
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 924 Of 2022

M/S Veteran Security Services

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 15-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Central Goods and Services Tax Act, 2017 — Section 29, 50(1), 125

Citation : (2022) 02 GAU CK 0036

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : N Gogoi

Final Decision : Disposed Of

Judgement

1. Heard Mr. N Hawelia, learned counsel for the petitioner. Also heard Mr. S C Keyal, learned Standing Counsel for all the respondents.

2. The petitioner M/S Veteran Security Services is a partnership firm engaged in the business of providing security services. The petitioner is

registered under the Goods and Services Act, 2017 bearing GSTIN No. 18AAGFV1352A2ZI. Under the law the petitioner firm is required to file

monthly return under the GST as per the Form GSTR-1. A stand is taken that the petitioner was providing security services to the outlets of the

AIRCEL under a contract agreement but as because AIRCEL itself were out of business, a huge amount of payment is due to the petitioner and

because of such loss in business, the petitioner could not pay the required GST dues to the department on time.

3. In the process there is a default amounting to Rs.2,58,30,801/- for the period of March, 2018 upto November, 2020 along with applicable interest

payable under Section 50(1) and penalty under Section 125 of the CGST Act, 2017. As the required tax amount had not been paid, the order of

cancellation of registration dated 19.01.2021 was issued by the Superintendent, Guwahati-C-5 as per the provisions of Section 29 of the CGST Act,

2017. Being aggrieved by the order of cancellation of registration, the petitioner submitted an application for revocation of cancellation but the same

was also rejected by the order dated 18.05.2021. Being aggrieved, this writ petition is instituted.

4. The petitioner firm express their willingness to pay the defaulted tax amount plus the interest and the penalty as may be assessed by the department

but because of the precarious financial condition they are unable to pay it in one go and therefore, makes a request that the petitioner be allowed to

make the necessary payments in 48 (forty eight) installments.

5. For the purpose, reference is made to the Circular No. 996/3/2015-CX dated 28.02.2015 of the Under Secretary to the Government of India in the

Ministry of Finance, Department of Revenue, Central Board of Excise and Customs.

Paragraph 5 of the said Circular provides as extracted below:

“5. It has been decided by the Board to allow recovery of arrears of taxes, interest and penalty in installments. The power to allow such

payment in monthly installments shall be discretionary and shall be exercised by the Commissioners for granting sanction to pay arrears in

installments upto a maximum of 24 monthly installments and by the Chief Commissioners for granting sanction to pay arrears in monthly

installments greater than 24 and upto a maximum of 36 monthly installments.”

Paragraph 7 of the said Circular provides as extracted below:

“7. The application for allowing payment of arrears shall be made to the jurisdictional Commissioner giving full justification for the

same. The approval of the application should be in writing with due acknowledgment taken on record. The permission should clearly

identify the number of installment and the month from which the payments of installments should begin and should also clearly stipulate

that in case of default in payment of installments, the permission shall be withdrawn and action shall be taken for recovery of arrears.”

6. A reading of paragraph 5 of the Circular dated 28.02.2015 would make it

discernable that the Commissioner of GST is empowered and has the discretion of granting sanction to pay arrear of the GST in installments upto maximum of 24 (twenty four) monthly installments and the Chief Commissioners are given the jurisdiction and authority to sanction the payment of the arrears in monthly installments greater than 24 (twenty four) upto a maximum of 36 (thirty six).

7. The petitioner firm in this writ petition claims that as because the precarious financial condition it would not be possible for them to pay the entire amount due plus the interest and penalty within 36 (thirty six) installments, which is the maximum limit for the Chief commissioner and therefore, seeks to invoke the discretionary power of the Court in allowing them to pay the dues in 48 (forty eight) installments.

8. Although there may be an inherent power of the Court under Article 226 of the Constitution of India to use a discretion but at the same time when it is statutorily provided by the departmental authorities that the maximum permissible installments be 36 (thirty six), we are of the view that the Court ought not to randomly extend such installments beyond 36 (thirty six) in the guise of exercising discretionary power but at the same time, we also take note that if further installments are not allowed to the petitioner firm, they would be unable to pay the tax due and it may result in a sustenance of the order of cancellation of their registration. If it is so, there would be an end of their business in the present form that they are undertaking and it would also be the end of the Department to have any tax from the petitioners in the form of the present business any further.

9. Considering the matter in its entirety, we requested Mr. S C Keyal, learned counsel to confer with the authorities in the GST Department whether in the facts and circumstances of the present case, the permissible installments can be extended upto 48 (forty eight). The departmental authorities are fair enough to agree to such proposition. But, however, an apprehension is raised that the past conduct of the petitioner is such that it is not confidence inspiring.

10. Without taking any specific view on the aforesaid aspect and in order to provide some succor to the petitioner firm so that they can remain in the business they are presently undertaking, it is provided that the amount of Rs.2,58,30,801/- plus the interest and the penalty that may be applicable

under the law be evaluated by the department and the assessed amount be determined. The said amount be equally divided by 48 and the monthly amount payable by the petitioner firm be determined and communicated to the petitioner. Upon such determination the petitioner firm shall pay the determined monthly installments within the 7th of every month.

11. As we are invoking the discretionary power, we further provide that if the petitioner firm do not comply with the requirement of paying the determined monthly installment within the 7th of every month, there shall be a periodical review by the departmental authority every month and in the event of default, the earlier order of cancellation may be revived by the department without any further reference.

12. The determination of the equal monthly installments to be paid by the petitioner firm be determined by the Assistant Commissioner, Guwahati, Division-2 on or before 28.02.2022 and in doing do, the petitioner firm may also be given a hearing and the petitioner firm shall cooperate with the authority. Upon such determination, the requirement of payment shall start from 1st of March, 2022.

13. It is needless to say that on the installments being determined and the petitioner firm continuing to pay the installments, the order of cancellation of the registration would have no effect, subject to any default if made by petitioner.

14. Writ petition stands disposed subject to the conditions stated hereinabove.