

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

W.P. NO.9041 OF 2020 (T-RES)

BETWEEN:

M/S M.S. RETAIL PRIVATE LIMITED
NO.21, KUMARA KRUPA ROAD
MADHAVANAGAR
BANGALORE – 560 001
(REP. BY ITS DIRECTOR
MR. ANIL K. MEHRA
S/O KRANTI MOHAN MEHRA
AGED ABOUT 60 YEARS

... PETITIONER

(BY SRI. CHIDANANDA URS B. G., ADVOCATE)

AND:

1. THE UNION OF INDIA
REP. BY ITS SECRETARY
MINISTRY OF FINANCE
NORTH BLOCK
NEW DELHI – 110 011
2. THE MINISTRY OF FINANCE
GOVERNMENT OF INDIA
REP. BY ITS SECRETARY MF (DR)
NEW DELHI – 110 011
3. THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
LVO-020, BANGALORE DVO-1

NO.1 C.K.JAFFER SHARIEF ROAD
VASANTH NAGAR
BANGALORE - 560 001

4. THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES, OFFICE OF
THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
LGSTO-20, #19/3, 2ND FLOOR
CUNNINGHAM ROAD
BANGALORE - 560 052
5. THE ADDITIONAL/JOINT
COMMISSIONER OF CENTRAL TAX
NORTH COMMISSIONERATE
NO.59, HMT BHAVAN, GANGANAGAR
BANGALORE - 560 037 ... RESPONDENTS

(BY SRI. K. V. ARAVIND, ADV. FOR R1, R2 AND R5;
SRI K.HEMA KUMAR, AGA FOR R3 AND R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
ISSUE A WRIT, ORDER OR DIRECTION IN THE NATURE OF
A WRIT OF MANDAMUS OR CERTIORARI OR PROHIBITION
OR ANY OTHER APPROPRIATE WRIT AND QUASH THE
SHOW CAUSE NOTICE FOR CANCELLATION OF
REGISTRATION ISSUED VIDE REFERENCE
NO.ZA290320052529J DATED 18.03.2020 WHICH IS
HEREWITH ENCLOSED AS ANNEXURE-C AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED ON 03.09.2020 FOR ORDER AND COMING ON
FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT
THROUGH VIDEO CONFERENCE MADE THE FOLLOWING:

ORDER

Heard.

2. Aggrieved by the action of respondent nos.3 to 5 in issuing show cause notice and subsequently canceling the registration of the petitioner under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') and thereafter refusing to revoke the cancellation of registration, the petitioner has preferred this writ petition.

3. The petitioner is a private limited company engaged in the business of trading in bath fittings and sanitary ware. It was duly registered as 'taxable person' under the provisions of the CGST Act read with the Karnataka Goods and Services Tax Act (hereinafter referred to as 'the KGST Act'). The registration number of the petitioner is GSTIN29AAFCM9224N1ZU.

4. It is the contention of the petitioner that it has been regularly filing its monthly returns disclosing the trading transactions and also paying the GST tax liability within the due dates.

5. On the ground that the petitioner had violated certain provisions of the CGST Act and the Rules, a show cause notice dated 18.03.2020 in Form GST-REG 17 read with Rule 22(1) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') was issued to the petitioner by respondent no.3. The notice directed the petitioner to appear before respondent no.3 on 23.03.2020.

6. It is stated that due to COVID situation, the petitioner was unaware of the notice and there was a complete lock down of the business from 22.03.2020. Consequently, the petitioner could not appear before the authorities as stipulated in the notice. The authorities passed an order for cancellation of the registration of the petitioner with effect from 06.06.2020.

7. On realizing that its registration was cancelled, the petitioner submitted a request to respondent no.3 on 09.06.2020 to revoke the order of cancellation. As there was no response from the authorities, the petitioner preferred W.P.No.8167/2020 before this Court. The said

writ petition was disposed of granting liberty to the petitioner to file necessary applications seeking revocation of cancellation of the registration and respondent no.3- Assistant Commissioner of Commercial Taxes, Bengaluru was directed to consider the same and pass appropriate orders.

8. Pursuant to the order passed in W.P.No.8167/2020, respondent no.4, who is the Officer with competent jurisdiction, issued a notice under Section 30 read with Section 29, Rules 21(b) and 23 of the CGST Act and the KGST Act and the Rules, 2017 to the petitioner asking him to show cause in respect of cancellation of its registration and a personal hearing was also afforded to the petitioner.

9. The petitioner submitted a reply on 06.07.2020 justifying its actions and prayed for revocation of the order of cancellation of registration and for restoration of the registration certificate. After hearing the petitioner, respondent no.4 by an order dated 10.07.2020 rejected the application for revocation of cancellation of registration. Subsequently, another communication dated 21.07.2020

has been issued to the petitioner intimating about the rejection of its application for revocation of cancellation.

10. Aggrieved by the issuance of show cause notice dated 18.03.2020, the order of cancellation of registration with effect from 06.06.2020, issuance of show cause notice dated 03.07.2020 by the authorities pursuant to the order of this Court in W.P.No.8167/2020 and the order of rejection of the application for revocation of cancellation dated 10.07.2020 and the communication dated 21.07.2020, the petitioner has challenged the said orders in the present writ petition. Further, the petitioner has also prayed for holding the provisions of Sections 29 and 30 of the CGST Act read with Rules 21, 22 and 23 of the CGST Rules as unconstitutional.

11. In the course of the proceedings, on 27.08.2020, the learned counsel for the petitioner submitted that he is not pressing the prayer (f) sought in the writ petition i.e. the prayer seeking to hold certain provisions of the CGST Act and the Rules there under as unconstitutional. Accordingly,

the said prayer of the petitioner has not been considered in the present writ petition.

12. Section 107 of the CGST Act provides for appeals to Appellate Authority against any decision or order passed under the CGST Act.

13. As the petitioner has withdrawn his challenge to the provisions of the CGST Act as unconstitutional and in the light of an appeal being provided in the Statute, the petitioner has confined his arguments as to error in jurisdiction in issuance of show cause notice and the order of cancellation of registration and the order of rejection of his application to revoke the order of cancellation.

14. It is the contention of the petitioner that apart from the show cause notices and the orders passed by the respondents, the office of Commissioner of Central Tax, Bengaluru had issued a show cause notice dated 23.12.2019 in respect of demand of certain amounts from the petitioner for alleged violation of various provisions of the CGST Act and the same is yet to be adjudicated.

Without adjudicating the same, the respondents ought not to have proceeded for cancellation of GST registration of the petitioner.

15. It is further contended that respondent no.3 issued the show cause notice for cancellation of registration on 18.03.2020 and its registration was cancelled with effect from 06.06.2020 and the petitioner had challenged the same by way of W.P.No.8167/2020 wherein this Court granted the liberty to the petitioner to file necessary application seeking revocation of cancellation of its registration and has directed the respondents to consider the same in accordance with law. This required the petitioner to make a representation to the authorities as to why the order of cancellation passed by them with effect from 06.06.2020 ought to be revoked. However, respondent no.4 issued a notice dated 03.07.2020 under Section 30 read with Section 29, Rules 21(b) and 23 of the CGST and KGST Acts and the Rules pursuant to the order of the writ petition which is bad in law. It is further contended that the order dated 10.07.2020 passed by respondent no.4

rejecting the request of the petitioner to revoke the order of cancellation is erroneous and against the principles of natural justice and in violation of the CGST Act and the CGST Rules. It is further contended that after passing of the order dated 10.07.2020, another order dated 21.07.2020 has been passed rejecting the application for revocation of cancellation, which wrongly states that the petitioner has not replied to the notice within the specified time and its application is rejected. It is further contended that admittedly, the orders have been passed for the alleged act of the petitioner in indulging in circular trading i.e., invoices or bills have been issued without supply of goods in violation of the provisions of the CGST Act and the CGST Rules for the period from July 2017 to December 2018 and there was no allegation of violation of any law for the current period when the order of canceling the registration was issued. It is further contended that the impugned orders are in violation of all known principles of natural justice and are very harsh. For the said reasons, the petitioner has sought them to be set aside.

16. Per contra, the respondents have contended that once the petitioner has given up the challenge to the constitutional validity of the provisions of the CGST Act and the CGST Rules made there under, the writ petition is not maintainable as Section 107 of the CGST Act, provides for appeals to Appellate Authority against any decision or order passed and sought for dismissal of the writ petition.

17. It is contended that the show cause notices and the orders passed by the respondents are in accordance with law and are passed by proper officer having jurisdiction over the same. There is no error in jurisdiction or violation of the principles of natural justice as alleged. It is also contended that the violation of any provisions under the CGST Act or the CGST Rules can lead to cancellation of the registration and recover all amounts that become due as per the provisions of the CGST Act and the CGST Rules there under. The show cause notice dated 23.12.2019 issued to the petitioner is towards recovery of the amounts. The amounts are sought to be recovered from the petitioner under the provisions of Section 16(2)(b), Section 31 read

with Rule 36, Sections 74, 50 and Section 122(1)(ii) of the CGST Act and the CGST Rules. The cancellation of registration in the instant case is under Section 29(2)(a) of the CGST Act and the order rejecting the application for revocation of cancellation is passed under Section 30 of the CGST Act. The recovery and cancellation are two separate actions and it is not a pre-requisite to decide the liability of payment of the petitioner under the CGST Act to cancel its registration.

18. It is not in dispute that the show cause notices, the order of cancellation and the order rejecting the application for revocation of cancellation are passed by proper officer. The show cause notice dated 18.03.2020 and the order of cancellation of registration dated 06.06.2020 have already been challenged before this Court in W.P.No.8167/2020 and cannot be challenged in the present writ petition. Pursuant to the order passed in W.P.No.8167/2020, respondent no.4 has issued the notice dated 03.07.2020 to the petitioner. There is no jurisdictional error in the said notice. The petitioner has made his representation on 06.07.2020 and

has been given a personal hearing by respondent no.4 and thereafter, he has passed the order dated 10.07.2020. Thus, the said order is a speaking order and it records the reasons for rejecting the application of the petitioner for revocation of cancellation of registration. The intimation to the petitioner dated 21.07.2020 is pursuant to the order dated 10.07.2020 and it has to be construed as an intimation of the decision taken on 10.07.2020 by respondent no.4, though the reason assigned in the said intimation and the manner in which the same is styled may be erroneous. Even otherwise, the order dated 10.07.2020 is a reasoned order and the same cannot be held as without jurisdiction and in violation of any principles of natural justice. If the petitioner is aggrieved by the said order, it ought to have filed an appeal under Section 107 of the CGST Act. The petitioner cannot challenge the same by way of a writ petition.

19. However, it is noticed that the petitioner has filed the writ petition because it initially challenged certain provisions of the CGST Act and the CGST Rules which could not have

been done by way of an appeal. However, for the reasons best known to the petitioner, it has given up the said prayer and has confined its arguments to erroneous exercise of jurisdiction by the respondents which this Court finds untenable for the aforementioned reasons. However, the Court is of the opinion that the petitioner cannot be bereft of its right of appeal as contemplated under the CGST Act. Hence, the following:

ORDER

The writ petition is hereby dismissed. The petitioner is at liberty to prefer an appeal as contemplated under Section 107 of the Central Goods and Services Tax Act, 2017, if it so desires, within thirty days from today.

It is made clear that no opinion has been expressed upon the merits of the case. If the petitioner prefers an appeal, it is for the appropriate authority to take a decision.

**Sd/-
JUDGE**

hkh.