

Court No. - 10

Case :- WRIT TAX No. - 1275 of 2021

Petitioner :- M/S Shree Bhagwat Estate Developer Private Limited

Respondent :- The Commissioner Uttar Pradesh Goods And Service Tax Lucknow And 2 Others

Counsel for Petitioner :- Punit Kumar Upadhyay

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

Heard Sri Punit Kumar Upadhyay, learned counsel for the petitioner and Sri Rishi Kumar, learned Standing Counsel for the State.

The present writ petition assails the order passed by respondent no. 3, Assistant Commissioner, Sector- 9, Uttar Pradesh Goods and Services Tax, Varanasi (A), Varanasi cancelling the registration of the petitioner and order of appellate authority, respondent no.2, upholding the order of cancellation.

The petitioner had applied for GST Registration and was duly granted by taxing authority. He is engaged in the business of construction and had submitted his GSTR-3B for the month of July, 2017 on 18.10.2017 declaring zero sales and thereafter no return was filed for two years and a show-cause notice was issued to the petitioner on 07.09.2019 and he was required to file a reply. As no reply was filed by petitioner, GST registration was cancelled by the order dated 19.09.2019. Against the said order, a delayed appeal was preferred by the petitioner which was rejected vide order dated 25.08.2021 on the ground that it was time barred.

The State has come up with a case in the counter affidavit that in view of Section 29(2) (d) of the Goods and Service Tax Act (hereinafter called as *GST Act*), the petitioner has not

commenced his business within six months and he has taken voluntary registration.

Learned counsel for the petitioner submitted that as the business of petitioner is of construction, the business could not be commenced within the period as given under the Act, as such the return could not be filed. He further tried to justify the action of the petitioner.

This Court after hearing the respective counsel finds that the petitioner has not preferred any reply before respondent no. 3 to the show-cause notice, as such, the order dated 19.09.2019 passed by the authority cancelling the registration as well as the appellate order dated 25.08.2021 passed by the appellate authority are hereby quashed and the matter is remitted back to respondent no. 3 to decide the matter giving an opportunity to petitioner to move his reply within 15 days from today. Respondent no. 3 shall consider the reply on merits within next one month and pass necessary orders in accordance with law.

The writ petition stands partly allowed.

Order Date :- 5.12.2022

V.S.Singh