



2023:KER:55811

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 14TH DAY OF SEPTEMBER 2023 / 23TH BHADRA, 1945

WP(C) NO. 24904 OF 2023

PETITIONER:

M/s. SANSCORP INDIA PRIVATE LTD,
8/788, MANNUR VALAVU, KADALUNDI,
CALICUT -673 328 BY MANAGING DIRECTOR
SAHIL SALEEK K C

BY ADVS.
P.RAGHUNATHAN
PREMJIT NAGENDRAN
M.SHYLAJA
RISHAL.K

RESPONDENTS:

- 1 THE ASSISTANT COMMISSIONER,
4TH CIRCLE, STATE GST DEPT., KOZHIKODE,
PIN - 673 006.
- 2 GOODS AND SERVICE TAX NETWORK [GSTN],
EAST WING, 4TH FLOOR, WORLD MARK-1, AEROCITY, NEW DELHI,
BY ITS CHAIRMAN, PIN - 110 037
- 3 UNION OF INDIA,
MINISTRY OF FINANCE, GOVERNMENT OF INDIA,
NEW DELHI, BY SECRETARY, PIN - 110 001
BY ADV SREEJITH P. R., SC

SMT. RESHMITA RAMACHANDRAN, GOVERNMENT PLEADR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14.09.2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



W.P.(C) No. 24904/2023 : 2 :

DINESH KUMAR SINGH, J.

W.P.(C). No. 24904 of 2023

Dated this the 14th day of September, 2023.

JUDGMENT

The present writ petition has been filed impugning Exhibit P3 order of cancellation of GST registration of the petitioner on the ground of non filing of the returns, despite notice.

2. The petitioner was a registered dealer under the Central Goods and Services Tax Act, 2017 ('GST Act, 2017' for short). The petitioner had failed to upload returns in form 3B for the period from April, 2022 to December, 2022 under Section 39 of the GST Act, 2017. As per Section 29 of the GST Act, 2017, if a dealer fails to file returns continuously for a period of six months, his registration is likely to be cancelled. The petitioner was issued with Exhibit P2 show cause notice directing him to show cause as to why registration under the GST Act, 2017 should not be cancelled for the failure to file returns for a continuous period of six months and also to appear before the authority on 13.02.2023 and he was given time to file reply to the show cause notice and also to appear for personal hearing. Despite the said notice, neither the petitioner filed a reply, nor he had filed a



W.P.(C) No. 24904/2023 : 3 :

return. Therefore, the petitioner's registration was cancelled with effect from 15.01.2023, vide Exhibit P3 order dated 04.03.2023.

Hence this writ petition seeking the following reliefs:

- 1) Issue a writ of certiorari quashing Exhibit P3 order cancelling the registration under the GST Acts;
- 2) Issue a writ of mandamus directing the second and/or third respondents to remove condition presently existing in the GTS site that unless payment of taxes/late fee/interest is made, return cannot be uploaded finding that the same is unauthorised by the Act and the Rules; and
- 3) Issue a writ of mandamus directing the respondents to keep open the GST site for the petitioners so as to enable them to continue their trading activities;

3. The learned counsel for the petitioner submits that after the cancellation of the registration, the petitioner had filed Exhibit P4 return dated 24.07.2023 i.e., after four months from the date of the impugned Exhibit P3 order. The learned counsel for the petitioner submits that since the petitioner has paid the tax along with the interest thereon, the petitioner's registration is liable to be restored. As per Section 15 of the GST Act, 2017, an assessee is liable to pay interest, if he failed to make payment of the GST amount or part thereof. According to the learned counsel, if the GST amount and the interest is paid, then the petitioner cannot be held to be a defaulter for



W.P.(C) No. 24904/2023 : 4 :

not filing the return and therefore, the proceedings for cancellation of the registration becomes *non est* and the order cancelling registration ought to be restored. I do not consider the said submission sustainable under law. The provisions for cancellation of registration and making payment of the tax due with interest are different. Both the provisions have different scope, purpose and intent. If an assessee fails to make payment of the full GST amount or part thereof, interest is liable to be levied for the delayed payment.

4. Further, if an assessee fails to file the returns for a continuous period of six months, his registration is liable to be cancelled. I do not find any contradiction in the provisions of Section 50 or Section 29 of the GST Act, 2017. An alternative remedy is available to the petitioner as per the Act and the Rules thereto, which the petitioner should have resorted to within the statutory prescribed limit. Against the order of cancellation of registration, the petitioner ought to have availed the remedy of appeal within a maximum period of three months from the date on which the order is communicated. Admittedly, the petitioner did not file returns for a period of six months consecutively and therefore, the authority has no option than to cancel the registration. I do not find any error of law in the exercise of jurisdiction by the authority in cancelling the registration of the



W.P.(C) No. 24904/2023 : 5 :

petitioner.

5. Therefore, the writ petition is dismissed. It is made clear that if the petitioner applies for fresh registration, the said application shall be considered in accordance with law, expeditiously.

Even though the learned counsel for the petitioner submits that the GST software is not in consonance with the Act and the Rules thereto, the said contention is only to be rejected. When the whole of the country files returns and pays tax by uploading the same in the same software, it cannot be said that the GST portal is not viable.

sd/-
DINESH KUMAR SINGH,
JUDGE.

Rv



W.P.(C) No. 24904/2023 : 6 :

APPENDIX OF WP(C) 24904/2023

PETITIONER'S EXHIBITS:

Exhibit P1	PHOTOCOPY OF INT. ORDER DT. 10.05.2022 IN WPC NO. 11808/2022
Exhibit2	PHOTOCOPY OF SHOW CAUSE NOTICE DT. 15.01.2023 RE: CANCELLATION OF GST REGN
Exhibit3	PHOTOCOPY OF ORDER FOR CANCELLATION OF GST REGISTRASTION DT.04.03.2023
Exhibit4	JANUARY MONTH 2023 GSTR 3B

RESPONDENTS' EXHIBITS: NIL

True Copy

PS To Judge.

rv