

[3379]

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

MONDAY, THE ELEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI**

WRIT PETITION NO: 31974 OF 2023

Between:

M/s DNC INFRASTRUCTURE-PRIVATE LIMITED, K.Square, H.No.1-6/1,
Plot No. 115, 4th Floor, Madhapur Road, Hyderabad, State of Telangana.
Rep. by its Managing Director Mr. D.Naresh Chowdary.

...PETITIONER

AND

1. The Superintendent, Madhapur-IV-Circle, Hyderabad Rural GST Range, Hyderabad.
2. The Principal Commissioner of Central Tax, Hyderabad Commissionerate, GST Bhavan, L.B. Stadium, Basheerbagh, Hyderabad.
3. The Union of India, Represented by its Secretary, Ministry of Finance, Central Secretariat, New Delhi.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ in the nature of Mandamus or any other appropriate writ or order or direction by declaring the action of the 1st respondent in cancelling the registration of the petitioner under the GST Act 2017 and not revoking the same despite of filing all the pending returns as illegal, arbitrary, high handed, without authority of law and jurisdiction, vitiated on account of violation of principles of natural justice and also in violation of Article 19 and 21 of the Constitution of India and consequently set aside the impugned proceedings of the 1st respondent dated 25/8/2023

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to

suspend the operation of the impugned order of cancellation of registration passed by the 1st respondent dated 25/8/2023 in FORM- GST-REG-19 pending disposal of the writ petition as otherwise the petitioner would be put to irreparable loss and hardship.

Counsel for the Petitioner: SRI. V. SIDDHARTH REDDY

**Counsel for the Respondent Nos.1&2: SRI DOMINIC FERNANDES
(senior standing counsel for CBIC)**

**Counsel for the Respondent No.3: SRI GADI PRAVEEN KUMAR,
DY. SOLICITOR GENERAL OF INDIA**

The Court made the following: ORDER

**THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI
WRIT PETITION No.31974 OF 2023**

ORDER: *(per Hon'ble Sri Justice P.SAM KOSHY)*

The order under challenge in the present Writ Petition is the order of cancellation of G.S.T. registration of the petitioner – M/s.DNC Infrastructure Private Limited *vide* the order, dated 25.08.2023 (Annexure-P1).

2. The learned senior counsel appearing for the petitioner submits that the impugned order of cancellation of Goods and Services Tax (for short "G.S.T.") registration has been done based upon the show cause notice issued on 02.07.2020. Referring to the said show cause notice, dated 02.07.2020 (Annexure-P2), the learned senior counsel for the petitioner submits that the default pointed out in the said show cause notice was only non-filing of the returns for continuous period of six (6) months, for which explanation was called for within seven (7) days. The contention of the learned senior counsel is that immediately on receipt of the said show cause notice, the petitioner had immediately taken necessary steps and have filed entire returns up till date.

At this juncture, the learned senior counsel for the petitioner submits that the date of the show cause notice itself would reveal that it was issued during peak COVID-19 pandemic period i.e., July, 2020 and it was in the said prevailing circumstances which prevented the petitioner in submitting the returns timely.

3. It is the further contention of the learned senior counsel for the petitioner that subsequently realizing the ground realities, the Government of India itself had issued circulars for extending the time for submission of returns and the returns were subsequently submitted within the extended period of time. Yet, the respondents continued to pursue with the said show cause notice and the impugned order now has been passed on 25.08.2023, after more than three (3) years inspite of the fact that the petitioner had submitted the entire returns within the extended period as was extended by the Government of India. Thus, the action on the part of the respondents in cancelling the G.S.T. registration based on the show cause notice, dated 02.07.2020 was totally erroneous, arbitrary and also bad in law.

4. The learned senior counsel further contended that pursuant to the cancellation of G.S.T. registration, the petitioner had approached the respondent authorities, under Section 30, Rule 23 of the Central Goods and Services Tax Act, 2017 (for short "C.G.S.T. Act, 2017") seeking for revocation of the cancellation of registration, highlighting these very facts which again is pending consideration before the authorities concerned for a positive decision. The learned senior counsel for the petitioner further submits that in terms of the provisions of law, a decision on the revocation application filed by the petitioner has to be taken within a period of one (1) month from the date of its submission, which period also is now crossed without a decision on the part of the respondent authorities.

5. At this juncture, the learned senior counsel for the petitioner submits that inspite of the revocation application under consideration before the respondent authorities and also the fact that the present Writ Petition was filed as early as on 16.11.2023, the learned counsel appearing for the Department has taken time on repeated occasions to seek instructions from the Department on the contentions stated

by the learned senior counsel for the petitioner reflected in the preceding paragraphs. No instructions were sought by the learned Senior Standing counsel for the Department. On the contrary, the Deputy Commissioner, Gachibowli, G.S.T. Division, had recently issued a letter on 05.12.2023 calling upon the petitioner for personal hearing on 10.12.2023 at 10:30 A.M. This, according to the learned senior counsel was done with a *malafide* intention to put coercion on the petitioner on his approaching this Court by way of the present Writ Petition. He further submits that the date of personal hearing was again fixed on 10.12.2023 knowing fully well that it was a Sunday. In spite of that, the petitioner went to the office and he found that it was closed and locked as it was a Sunday. Therefore, no development as such transpired on the date of hearing fixed by the Deputy Commissioner, Gachibowli, G.S.T. Division. He submits that the said notice for personal hearing is uncalled for. *Vide* Annexure-P1, dated 25.08.2023, the G.S.T. registration of the petitioner already stands cancelled and there could not have been further personal hearing post the cancellation order having been passed and on this ground also the said order is

bad. He further submits that if at all personal hearing was to be issued it should have been issued, by the same authority who had cancelled the registration, however, it has been issued by another higher authority in rank i.e., Deputy Commissioner, Gachibowli, G.S.T. Division, which is not permissible under law.

6. At this juncture, the learned Senior Standing Counsel for the Department submits that he has instructions from respondent No.2 that the cancellation of G.S.T. registration in fact was not on account of the default on the part of the petitioner in not furnishing its returns continuously for a period of six (6) months or in terms of the show cause notice, dated 02.07.2020. According to the learned counsel for the Department, the cancellation in fact has been initiated on the ground of the petitioner having fraudulently availed I.T.C. and passed it on further and the amount of I.T.C. availed by the petitioner is to the tune of Rs.31 Crores and it was in this context that the proceedings were drawn, but erroneously the cancellation order reflects the cancellation having been done on the grounds reflected in the show cause notice, dated 02.07.2020. There are no instructions so far as the notice of

personal hearing, dated 05.12.2023 issued by the Deputy Commissioner, Gachibowli, G.S.T. Division, is concerned.

7. Having heard the contentions put forth on either side, what is apparently evident that though the Department has been granted couple of opportunities to seek instructions, the only oral instructions received by the learned counsel for the Department is to the extent that the order of cancellation does not seem to be on the grounds which were otherwise there in the show cause notice, dated 02.07.2020, but on the ground of the petitioner having fraudulently availed I.T.C. to the tune of Rs.31 Crores. The learned senior standing counsel for the Department in this regard referred to the correspondence received from the Department, dated 30.05.2023.

8. So far as this Bench is concerned, all that we need to consider is the veracity of the impugned order in the present Writ Petition. The impugned order is the one of cancellation of G.S.T. registration.

9. A Plain reading of the impugned order clearly reflects that the said action is in reference to the show cause notice,

dated 02.07.2020. The said show cause notice is also enclosed as Annexure-P2 in the present Writ Petition. The said show cause notice is only so far as default on the part of the petitioner in non-furnishing the returns continuously for a period of six (6) months.

10. Admittedly, if the contention of the petitioner is to be accepted, the show cause notice itself was issued during the peak COVID-19 pandemic period when the entire Country was under lockdown for a considerable period of time. The entire business world itself had come to a stand still. Realizing this fact, the Government of India had extended the time for the tax payers to file their returns within extended period of time and the petitioner has submitted its returns within the extended period which stood extended by the Government of India. This fact was brought to the notice of the authorities concerned also.

11. What is also apparent from the pleadings is that from 02.07.2020 till the impugned order, dated 25.08.2023 was passed, there does not seem to be any further transaction or correspondence made in this regard *inter se* between the petitioner and the Department.

12. So far as the default on the part of the petitioner in not filing returns within the stipulated period of time in terms of the Income Tax Act, 1961 at the relevant point of time is concerned, the impugned order does not in any manner deal with the fact that the petitioner has subsequently submitted the returns after the show cause notice having been issued on 02.07.2020 and the default pointed out in the show cause notice stood cured and rectified. Thereafter, there was no such default on the part of the petitioner so far as non-furnishing of returns upto April, 2023.

13. The impugned order to the aforesaid extent is totally without any reason nor can it be said to be a speaking order so as to hold the said action on the part of the respondents to be proper, legal and justified. Moreover, even subsequent to the cancellation order having been passed, the petitioner has availed the statutory remedy available to it under Section 30 of the C.G.S.T. Act, 2017, seeking revocation of the cancellation which too has been pending. The respondents does not seem to be in a mood to take a decision in the revocation application either in the affirmative or negative, though the statute provides for a decision on the same within

a period of one (1) month from the date of the application for revocation is filed.

14. The respondents on the contrary seem to be bent upon taking coercive steps on the petitioner, as would be evident from the correspondence, shown to this Bench by the petitioner today, dated 05.12.2023 issued by Sri K. Nagaraju, Deputy Commissioner, Gachibowli, G.S.T. Division, which is in total contravention to the provisions of law.

15. The notice, dated 05.12.2023 seems to be issued again for personal hearing. So far as the cancellation of registration is concerned, once when the cancellation of registration having been done way back on 25.08.2023 and the said order being a final order, there could not have been another letter issued by the Department calling upon the petitioner for personal hearing. The said action on the part of the Department amounts to post decision hearing which in the above factual backdrop is unacceptable in the eyes of law.

16. In the given factual background of the case, as regards the contentions raised by the learned counsel for the

Department so far as the alleged fraudulent act of the petitioner availing fraudulent I.T.C. to the tune of Rs.31 Crores is concerned, the plain reading of the order of cancellation does not reflect any such allegation against the petitioner. On the contrary the order of cancellation references to the show cause notice, dated 02.07.2020 alone. The order of cancellation, dated 25.08.2023 shows that there was substantial period of time of more than three (3) years at the hands of the respondents, during which period they could have taken appropriate steps against the petitioner, if at all they intended to do so. So far as the so-called fraudulent availing of I.T.C. is concerned, the impugned order does not reflect any of these developments that have transpired during the intervening said three (3) years period.

17. In the given factual backdrop, particularly taking into consideration the submissions made by the learned senior counsel for the petitioner that after the show cause notice having been issued, taking advantage of the circular of the Government of India extending the time of furnishing the returns, the returns have already been filed by the petitioner within the extended period of time, we are finding it difficult

to sustain the impugned order (Annexure-P1), dated 25.08.2023. On this very ground alone, the impugned order, therefore, is not sustainable and the same deserves to be and is accordingly set-aside/quashed. The respondent authorities are directed to forthwith restore the G.S.T. registration of the petitioner.

18. So far as letter, dated 05.12.2023 is concerned, it is expected that the Commissioner, Ranga Reddy Commissionerate would take note of the letter, dated 05.12.2023 and look into the aspect as to whether this letter of personal hearing post the order, dated 25.08.2023 of cancellation of G.S.T. registration having been passed was warranted or not. If at all, the said order is an order of personal hearing post the order, dated 25.08.2023, then, in the light of allowing of the present Writ Petition, the letter, dated 05.12.2023 automatically loses its efficacy.

19. Accordingly, the Writ Petition stands allowed with the aforesaid direction and observations. There shall be no order as to costs.

PSK,J & NTR,J
W.P.No.31974 of 2023

20. Consequently, miscellaneous petitions pending, if any shall stand closed.

Sd/-K.VENKAIAH
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Superintendent, Madhapur -IV- Circle, Hyderabad Rural GST Range, Hyderabad.
2. The Principal Commissioner of Central Tax, Hyderabad Commissionerate, GST Bhavan, L.B. Stadium, Basheerbagh, Hyderabad.
3. The Secretary, Union of India, Ministry of Finance, Central Secretariat, New Delhi.
4. One CC to SRI. V. SIDDHARTH REDDY, Advocate [OPUC]
5. One CC to SRI. DOMINIC FERNANDES (senior standing counsel for CBIC) [OPUC]
6. One CC to SRI. GADI PRAVEEN KUMAR, DY. SOLICITOR GENERAL OF INDIA [OPUC]
7. Two CD Copies

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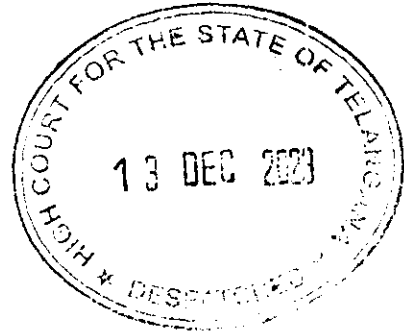
CC TODAY

HIGH COURT

DATED:11/12/2023

ORDER

WP.No.31974 of 2023



**ALLOWING THE WRITPETITION
WITHOUT COSTS**

PPX
13/12

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