

Court No. - 1

Case :- WRIT TAX No. - 1084 of 2021

Petitioner :- Ranjana Singh

Respondent :- Commissioner Of State Tax And 2 Others

Counsel for Petitioner :- Alope Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Shri Alope Kumar, learned counsel for the petitioner and Shri A.C. Tripathi, learned Standing Counsel for the respondents.
2. With the consent of learned counsel for the parties, the present writ petition is decided at the admission stage itself, as no facts are in dispute.
3. The present writ petition has been filed assailing the impugned orders dated 23.09.2021 and 28.10.2021, whereby, grant of GST registration has been rejected.
4. The brief facts of the case are that the petitioner is engaged in the business of providing employment through consultancy, which fall within the purview of U.P. Goods & Service Tax Act (hereinafter referred to as, '**the Act**'). On 17.08.2021, the petitioner applied for grant of registration under the Act through online mode. On submission of the application, an inspection was made at the business premises of the petitioner on 15.09.2021 and thereafter, notice was issued for providing certain information and documents in support thereof. On submission of reply, by means of the impugned order dated 23.09.2021, the application of the petitioner was rejected, against which the petitioner preferred an appeal before the respondent no. 3, which too has been dismissed vide order dated 28.10.2021. Hence, this petition.
5. Learned counsel for the petitioner submits that the petitioner has

applied for grant of GST registration as per the provision of section 25 of the Act, read with rules 8 & 9 of the Goods & Service Tax Rules, 2017 (hereinafter referred to as, '**the Rules**') furnishing all the requisite documents as prescribed under the Act, i.e., Adhar Card, PAN card, house tax receipt. Thereafter, on the date of inspection, all the details, as required by the Serving Officer, were provided. Thereafter, a notice was issued requiring the petitioner to submit electricity bill or house tax bill or any other document related to the business. In reply to it, information and documents as required were furnished by the petitioner, but by the impugned order dated 23.09.2021, the same was rejected for non-submission of electricity bill. The said order was assailed before the appellate authority, but the appellate authority too has rejected the appeal confirming the order of rejection. Learned counsel for the petitioner further submits that the order passed by the authorities are patently illegal, perverse and against the provisions of law. He submits that the provision of the Act only requires for providing documents, i.e., PAN and Adhar as well as the property tax receipt, which were furnished by the petitioner, but without looking into the same, the impugned orders have been passed. Therefore, he prays for quashing the impugned orders.

6. *Per contra*, learned Standing Counsel, at the very outset, submits that under rule 8 of the Rules, forms are prescribed, i.e., form GSTR-1, which have two parts, i.e., Part A and Part B. Part B contains list of documents required for the purpose as mentioned therein and the same required for submission of electricity bill or property tax receipt. Therefore, the order for non-compliance was passed. He very fairly submits that as per the provisions of the Act, PAN card and Adhar card are required, which were provided by the petitioner and hence, the orders impugned cannot be sustained.
7. After hearing the learned counsel for the parties, the Court has

perused the record.

8. For deciding the controversy involved in the present writ petition, section 25 and rules 8 & 9 will be relevant, which are quoted below:

"Section 25- Procedure for Registration:

(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005 (Act No. 28 of 2005), in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the State.

Explanation.- Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this Act shall be granted a single registration in a State or Union Territory:

Provided that a person having multiple places of business in the State may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.

(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible for grant of registration:

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

"(6A) Every registered person shall undergo authentication, or

furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:

Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

*(6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or **furnish proof of possession of Aadhaar number**, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:*

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6C) On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification:

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

(6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

*Explanation.—For the purposes of this section, the expression “**Aadhaar number**” shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.*

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

(8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1),-

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner,

shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period."

9. A perusal of the sub-section (6) of section 25 of the Act clearly reveals that for registration, only PAN card and Adhar card are required to be furnished. For a ready reference, rules 8 & 9 of the Rules is quoted below:-

"Rule 8. Application for registration.-(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant") shall, before applying for registration, declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in Part A of FORM GST REG-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from his other units located outside the Special Economic Zone:

Provided further that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.

(2) (a) **The Permanent Account Number shall be validated online** by the common portal from the database maintained by the Central Board of Direct Taxes.

(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and

(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.

(3) On successful verification of the Permanent Account Number, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

(4) Using the reference number generated under sub-rule (3), the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(4A) Every application made under rule (4) shall be followed by—

(a) biometric-based Aadhaar authentication and taking photograph, unless exempted under sub-section (6D) of section 25, if he has opted for authentication of Aadhaar number; or

(b) taking biometric information, photograph and verification of such other KYC documents, as notified, unless the applicant is exempted under sub-section (6D) of section 25, if he has opted not to get Aadhaar authentication done,

of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.

(5) On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

(6) A person applying for registration as a casual taxable person shall be given a temporary reference number by the common portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgment under sub-rule (5) shall be issued electronically only after the said deposit."

Rule 9. Verification of the application and approval.-(1)The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant **within a period of seven working days from the date of submission of the application.**

Provided that where-

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business.

the registration shall be granted within thirty days of submission of application, after physical verification of the place of business in the presence of the said person, in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit.

(2) Where the application submitted under rule 8 is found to be deficient, either in terms of any information or any document required to be furnished under the said rule, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may issue a notice to the applicant electronically in FORM GST REG-03 within a period of three working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04, within a period of seven working days from the date of the receipt of such notice.

Provided that where -

(a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business, the notice in FORM GST REG-03 may be issued not later than thirty days from the date of submission of the application.

Explanation.- For the purposes of this sub-rule, the expression —clarification includes modification or correction of particulars declared in the application for registration, other than Permanent Account Number, State, mobile number and e-mail address declared in Part A of FORM GST REG-01.

(3) Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within a period of seven working days from the date of the receipt of such clarification or information or documents.

(4) Where no reply is furnished by the applicant in response to the notice issued under sub-rule (2) or where the proper officer is not satisfied with the clarification, information or documents furnished, he shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG- 05.

(5) If the proper officer fails to take any action, -

(a) within a period of seven working days from the date of submission of the application in cases where the person is not covered under proviso to sub-rule (1); or

(b) within a period of thirty days from the date of submission of the application in cases where a person is not covered under proviso to sub-rule (1); or

(c) within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2),

the application for grant of registration shall be deemed to have been approved."

10. Section 25 provides detailed procedure to be followed by every person applying for registration. It further requires by the person to provide PAN and Aadhar details. Rule 8 and 9 provides how the application for registration has to be dealt with. Further Rule 9 suggests the manner in which verification has to be done. If on examination of the application accompanying the documents all found to be in order then approval should be granted within seven working days. In the event the officer is not satisfied with the documents annexed then inspection is provided and further clarification can be sought.
11. In the case in hand PAN and Aadhar details as well as property receipts were provided as per the provisions of the Act and Rule. The petitioner has annexed the photocopy of the Form applied for registration as Annexure No. 1, whereas the details of PAN, Aadhar and property receipts have mentioned. PAN reference has come at page nos. 25, 28 and 29; Aadhar reference has come at page 29 and 33 as well as property reference has come at page 37.
12. The petitioner has further annexed a copy of PAN, Aadhar and property receipt as Annexure No. 2, 3 and 4 of the writ petition at page 42, 44 and 46 respectively. It has been averred in the writ petition that after submission of the aforesaid documents along with online form, the inspection was conducted at the premisses of the petitioner and all details as well as documents as required by the surveying officer was provided and after due satisfaction, the surveying officer left the site.
13. Thereafter show cause notice dated 15.9.2021 was issued, relevant part of which, is quoted below:-

“This is with reference to your Registration application filed vide ARN AA090821108211O dated 17/08/2021 the Department has examined your application and is not satisfied with it for the following reasons:

*1. Principal Place of Business-Nature of Possession- Other (Please Specify) – Submit recent electricity bill **or** house tax copy **or** any other documents related business place.”*

14. A perusal of the notice shows that the petitioner **was required to submit recent electricity bill or house tax receipt**. The petitioner submitted reply along with requisite document but the application of the petitioner for grant of registration certificate was rejected vide order dated 23.9.2021, which is quoted below:-

“ Order of Rejection of Application for Registration

This has reference to your reply filed vide ARN AA090821108211O

dated 17/08/2021. The reply has been examined and the same has not been found to be satisfactory for the following reason:

1. *Principal Place of Business-Nature of Possession Other (Please specify) -Please Specify.*

2. **Submit recent electricity bill**

Therefore, your application is rejected in accordance with the provisions of the Act.”

15. Thereafter the petitioner preferred an appeal in which specific grounds were taken. The relevant statement of facts as well ground are quoted hereunder:-

Statements of Facts.

1...

2..

3. *The State Jurisdictional Officer, Assistant Commissioner Sector 12, Prayagraj issued a notice dated 15.9.2021 in GST REG03 vide Ref. No. : ZA090921117282N seeking additional information / clarification relating to Nature of Possession of Principal Place of Business and submission of recent electricity bill / house tax copy or any other document relating to business place.*

4. *The appellant filed clarification on 20.9.2021 reiterating the facts furnished in the original application and **again submitting copy of house tax receipt** as demanded by the state jurisdictional officer.*

5...

6...

Grounds of appeal

1. *The order of rejection has been passed without considering the reply dated 20.9.2021 in **which the nature of possession of the principal place of business has been clearly clarified as being in the ownership of the applicant / sole proprietor supported by copy of latest house tax receipt for FY 2021-22** issued by Nagar Nigam Prayagraj. House Tax receipt is a valid document which is accepted as proof of address under the provisions of law.*

16. But by the impugned order dated 28.10.2021, the appellate authority has rejected the application of the petitioner. The relevant part of the order dated 28.10.2021 is quoted below:-

“अपील सुनवाई के समय श्री असति हजेला फर्म के अधिकृत प्रतिनिधि उपस्थित हुए तथा अपील मेमो में वर्णित तथ्यों को दोहराया। दाखिल अपील मेमो एवं पत्रावली का अवलोकन किया गया। अपीलकर्ता द्वारा पंजीयन हेतु पंजीयन प्रार्थनापत्र ARN- AA0908211082110 दि० 17.08.2021 द्वारा दाखिला किया गया है। पंजीयन प्रार्थनापत्र को एडजुडिकेटिंग आफीसर (Adjudicating Authority) श्री मिथिलेश कुमार द्वारा एग्जामिन करने के बाद दि० 15-09-21 को व्यापारी को दि० 23-09-21 के लिए नोटिस जारी की गयी एवं दि० 23-09-21 को यह अंकित करते हुए कि दाखिल पंजीयन प्रार्थनापत्र निम्न कारणों से संतोषजनक नहीं पाया

गया-

1- Principal Place of Business – Nature of Possession- Others
(Please pecify)

2- Submit recent electricity Bill

अतः उपरोक्त साक्ष्य प्रस्तुत न किये जाने के कारण व्यापारी के पंजीयन प्रार्थनापत्र को अस्वीकार किया गया है।

अपीलकर्ता द्वारा इलेक्ट्रिसिटी बिल सुनवाई के समय भी नहीं दाखिल किया गया। ऐसी स्थिति में एडज्युडिकेटिंग आफीसर(Adjudicating Authority) द्वारा पंजीयन निरस्तीकरण का आदेश उचित ढंग से पारित किया गया है जिसमें किसी हस्तक्षेप की आवश्यकता नहीं है।”

17. On perusal of the show cause notice, rejection order and the appellate order, it appears that firstly clarification with regard to the possession of business premisses was required to be specified and secondly submission of electricity bill / house tax receipt was required. The petitioner has submitted the explanation with regard to the nature or possession of the business premisses as the owner and also submitted the house tax receipt in compliance with the show cause notice. But the authorities below without whispering any word or assigning any reason had rejected the application for non-specifying possession of the business premisses and insisted for submission of electricity bill. The authorities below have further erred in law in not pointing out any defect in submission of house tax receipt and insisted for submission of electricity bill whereas the notice dated 15.9.2021 gave an option for submission of recent electricity bill or house tax receipt. Further the petitioner has explained that the property, in which the business is being undertaken, is under the ownership of the petitioner. So the other grounds also falls for non specifying the nature or possession of the property. Further in the grounds of appeal, it has specifically been mentioned that the petitioner’s place of business is under ownership of the sole proprietor. Once the fact which has not only been mentioned in the in the reply to the show cause notice given in the application

filed for grant of registration but also in the grounds of appeal, it was bounded duty of the authorities to look into the same and then pass the order in accordance with law instead of their own whims and fancies. Once the petitioner has satisfied the requirement of the law for providing PAN, Aadhar and also house tax receipt / property receipt then the authority should not have insisted for submission of receipt of electricity bill. In the absence of any short comings or defect being pointed out in the reply submitted along with documents, the petitioner has every right to carry on her business lawfully and her right to do business cannot be confiscated in illegal and arbitrary manner.

18. It is clear from the records that all the documents as required under the Act and law as well as in compliance to the show cause notice were furnished by the petitioner and without pointing out any defect or short coming therein, the application should not have been rejected.
19. Before parting with the judgement, the Court is constraint to observe that the two authorities of the State have acted only with a view to harass the petitioner which cannot be accepted at any cost. This attitude of the respondents in this petition cannot be tolerated as the officers are being State functionary has to act fairly and their action must be in consonance with the provisions of the Acts as well as Rules.
20. In view of the foregoing discussions, the impugned orders dated 23.09.2021 and 28.10.2021 cannot be sustained in the eyes of law. The impugned orders dated 23.09.2021 and 28.10.2021 are hereby quashed. The respondents are directed to pass an appropriate order on the material available on record within a period of seven working days from the date of receipt of a copy of this order.
21. The writ petition is allowed with cost of Rs. 15,000/-, which shall be deposited before the High Court State Legal Services

Committee, Allahabad within a period of 20 days from today.

22. The respondents are at liberty to recover the cost from the erring Officer.
23. The compliance report regarding deposit of the cost shall be filed before the Registrar General of this Court within 45 days from today. In the event, the cost upon the erring officer is not deposited or the compliance report is not filed within the said period, the Registry is directed to list the case in chambers for further order.

Order Date :-09/12/2021

Amit Mishra