

[Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.]

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

[Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.]

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or

capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.”

2. Sub-section (2) of Section 29 of the Act, specifically creates a statutory obligation, that in an eventuality, where the registration is required to be cancelled, under either of the modes, i.e. on account of the commission of the default or on account of an application submitted by the registered assessee, the opportunity of hearing is mandatory, required to be provided.

3. This is what has been further postulated by the Rules framed under Section 164 of Uttarakhand Goods and Services Tax Act, 2017, as provided under Rule 22 Sub-rule (3). In fact, what the learned Senior Counsel for the petitioner, Mr. S.K. Posti, wants to contend that once he himself as a partner of a partnership firm has submitted an application for cancellation of his GST registration No.GSTIN05AAGFE8721Q1ZZ, which was filed on 30th May, 2020, in that eventuality, under Sub-rule (3) of Rule 22 of the Rules framed under the Act, the decision on the application submitted for the cancellation of the registration was required to be taken by respondent No.2, within a period of 30 days as provided therein. In case, if no decision is taken, within a period of 30 days, in that eventuality, the respondent No.2, becomes functus officio, to pass any order on the application which was submitted by the person concerned for cancellation of the registration and hence, any subsequent cancellation

of registration after the expiry of the aforesaid period would be without jurisdiction.

4. Rule 22 of the Rules is extracted hereunder :-

“22. Cancellation of registration. -(1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.

(2) The reply to the show cause notice issued under sub-rule (1) shall be furnished in FORM REG-18 within the period specified in the said sub-rule.

(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted under rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.

(4) Where the reply furnished under sub-rule (2) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG-20.

(5) The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself”

5. The second limb of argument of the learned counsel for the petitioner is that, even if at all a decision was required to be taken on an application submitted by the petitioner on 30th May, 2020, requesting for the cancellation of the registration, if at all, the decision was required to be taken after the expiry of the period of 30 days, as provided under Sub-rule (3) of Rule 22 of the Rules, in that eventuality too, the implications of Sub-section (2) of Section 29 of the Act, ought to have been followed and the petitioner should have

been mandatorily provided with an opportunity of hearing and in the absence of there being any prior show cause issued to the petitioner, calling his explanation, the order of cancellation of his registration would be apparently and statutorily bad in the eyes of law.

6. Even if the impugned order of 12th July, 2021, is taken into consideration, there is not even a single whisper that after the expiry of 30 days, as provided under Sub-rule (3) Rule 22, when the cancellation was being resorted to, though apart from the fact that the office concerned has become functus officio after the expiry of 30 days, even if at all, the cancellation was required, in that eventuality, then the petitioner ought to have been heard.

7. On these short premise, the learned counsel for the parties agreed that because the order impugned apparently suffers from the violation of a statutory provisions of non-providing of any opportunity as contemplated under Sub-section (2) of Section 29 of the Act, with the consensus of the parties, the impugned order is quashed.

8. The Writ Petition is allowed. The matter is remitted back to the respondent No. 2, to take an appropriate action and decision thereon too, only after providing an opportunity of hearing to the petitioner and the decision on the same would be taken within a period of 30 days from the date of service of the certified copy of this order.

(Sharad Kumar Sharma, J.)

21.09.2021