

F.R. TRADE LINKS VS THE STATE TAX OFFICER AND ORS WP (C) NO. 28917 OF 2020

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ABSTRACT

In the matter of F.R.Trade Links Vs The State Tax Officer and Ors WP (C) No.28917 of 2020 held that GST Authority to restore the GST registration as the petitioner has produced the receipt of the building tax from the local authority to prove the authenticity of his stand²⁴. According to section 29 (2) of the act, the proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where a registered person has contravened such provisions of the act or the rules made there under as may be prescribed or a person paying tax under section 10 has not furnished returns for three consecutive tax periods or any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months or 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 registration as been obtained by means of fraud, willful misstatement or suppression of facts. Under the act it's mentioned that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

KEYWORDS : Tax, GST, CGST, SGST, Registration

Case Title	F.R. Trade Links Vs The State Tax Officer and Ors
Case Number	Writ Petition (C) No.28917 of 2020
Date of the Order	05/08/2021
Jurisdiction	High Court of Kerala
Quorum	Justice A.M.Badar
Author of the Judgment	Author-Justice A.M. Badar
	Citations- WP(C) No.28917 of 2020 dated August 05, 2021
Petitioner	Mohammed Rizwan Rasheed, Proprietor F.R Trade Links
Respondents	1. The State Tax Officer 2. The Assistant Tax Officer 3. Goods and Service Tax Network 4. The Commissioner of State Taxes

²⁴ Indian kanoon Case study, FR Trade Links Vs The State Tax Officer and Ors WP (C) No. 28917

Counsel for Petitioner	Advocate Aji. V. Dev , Advocate Alan Priyadarshi Dev, Advocate Miran Ramachandran Nair
Counsel for Respondent	Advocate M.M. Jasmine, Advocate P.R. Sreejith
Acts and Sections Involved	<ul style="list-style-type: none"> • The Central Goods and Services Tax Act, 2017 and The State Goods and Services Tax Act, 2017 <p>Section 29(2)</p>

I. INTRODUCTION

Kerala HC: No cancellation of GST registration in absence of proper enquiry by GST Authority²⁵. According to the section 29(2) of the CGST Act, the proper officer may cancel the registration of a person from such date, including retrospective date, as he may deem fit, where there's a person under normal scheme has not furnished returns for continuous periods of 6 months.

GST registration can be cancelled voluntarily if the business is dormant or doesn't have the necessary business turnover. It can also be cancelled by a GST Officer if the business is non compliant under GST. An officer can initiate the cancellation of a GST registration under GST if the officer has justification to cancel the GST registration. The proceedings for GST cancellation by officer will begin by issuing a show cause notice in form GST REG-17. In case of cancellation by the GST Officer, the officer would notify the taxpayer whose GST registration is liable to be terminated before cancellation. The taxpayer should be given a reasonable opportunity to be heard before their GST registration is canceled. The notice to the taxpayer from GST officer should be sent in form GST REG-17 with specific reasons. The notice would also allow the taxpayer to respond to the notice and have a date and time if a hearing is scheduled. If the taxpayer responds to the notice and the proper authority is satisfied with the response, he or she may dismiss the case and issue an order in Form GST REG-20. If he is

not satisfied, he may issue a form GST REG-19 order canceling the GST registration.

I. FACTS OF THE CASE

In this case the petitioner filed writ petition at the Hon'ble High Court of Kerala challenging the orders cancelling his certificate of registration under the CGST or SGST Act and rejection of his application for revocation of cancellation of registration certificate²⁶

The Respondent stated that the business place is situated in a building which is partially completed with no building number affixed by the local authority. The CGST Act, 2017 and the SGST Act under section 29(2) provide grounds for cancellation or suspension of registration does not envisage the contingency of situation of place of business in a partially completed building having no building number affixed on it, such is not the reason as contemplated by section 29(2) of the CGST Act, authorizing proper person to cancel the registration of a person in exercise of the powers conferred by the relevant provision of the statute. It implies that the Respondent have invoked provisions under section 29(2) of the CGST Act, 2017 for cancellation of registration of the petitioner. The petitioner had produced the receipt of the building tax from the local authority to prove the authenticity of his hand then even without considering this document the GST authority had canceled the registration based on the report of the intelligence officer.

²⁵ Bimal Jain, CA clubindia

²⁶ F.R.Trade links 2022(56) G.S.T.L 291 (High Court of Kerala, Taxo.

II. ISSUES

A. Whether the impugned order of cancellation of registration shows that registration is canceled by invoking provision of sub section (2) of section 29 of the CGST Act, 2017?

B. Whether there are grounds for cancellation of GST registration by the proper officer?

C. Whether the registered tax payer entitled to an opportunity of being heard before cancellation of registration?

IV ARGUMENTS FAVOUR OF PETITIONER

A. GST Officer cannot cancel the registration on basis of report of intelligence officer without conducting enquiry.

B. The petitioner had produced the receipt of the building tax from the local authority to prove the authenticity of his stand. The petitioner was holding GST registration certificate.

C. The petitioner challenged the orders of canceling his certificate of registration under the CGST or SGST Act.

D. There was no enquiry conducted by the state tax officer as contemplated in Rule 25.

V. ARGUMENTS FAVOUR OF RESPONDENTS

A. The proper officer can cancel registration of a person for the reasons stated in sub section (2) of section 29 of the CGST Act.

B. Based on the report of the intelligence officer a notice was issued to cancel the registration of the petitioner in form GST Reg-17.

C. Several inspections were conducted at the place of business of the petitioner and it was found that no business was conducted at the place.

D. The business place was situated in a building which is partially completed with structure only and was not having any building number or shutter and no book of accounts were placed.

E. During inspection it was found that some stock was kept at the new premises near the house of the petitioner, but that place was not added in the GST registration and suspected to be bogus.

VI. ORDER OF THE COURT

The Hon'ble Kerala High Court held that the State Tax Officer is the proper officer for assessment and also a competent officer to invoke provisions of Rule 25 of the CGST Rules and SGST Rules. The State Tax Officer is also the registering authority of the petitioner²⁷. A notice was issued to cancel the registration of the petitioner by the officer. The State Tax Officer didn't conduct any enquiry as contemplated in Rule 25²⁸. The petitioner was aggrieved by the report of the intelligence, but he proceeded to cancel registration. Without considering any document the registering GST authority had canceled the registration. The application for revocation of cancellation of registration is also rejected by the Respondent without proper enquiry in the matter. In the result, the writ petition is allowed. Consequently the State Tax Officer is directed to restore the registration of the petitioner. The application for revocation of cancellation of registration was rejected by the respondent without proper enquiry in the matter. The court held that impugned order is quashed and set aside.

VII. CONCLUSION

The case of shows the importance of restoring the GST registration. Under the CGST Act there's a provision which gives gives an officer to initiate the cancellation of a GST registration under GST if the officer has justification to cancel the GST registration. No cancellation of GST registration in absence of proper enquiry by GST Authority can be done. the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

²⁷ Taxo, FR Trade Links Vs The State Tax Officer and Ors WP (C) No. 28917

²⁸ Case laws, Commercial Taxes Department Staff College



VI. RELATED CASE LAW

A. P.Y.Mustaffa, Kanakonam Traders, Erattupetta
Vs Additional Sales Tax Officer, Pala and Another
[(2002) 10 KTR 192]

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