

GAHC010033372020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/985/2020

SAMBHU DAS
PROP OF M/S VAISHNO TRADING, HAVING HIS OFFICE AT KEDAR ROAD,
NEAR HOTEL RITURAJ, GUWAHATI, KAMRUP(M), ASSAM, PIN- 781001

VERSUS

COMMERCIAL TAX OFFICER AND 4 ORS
(SUPDT OF TAXES), NEW KAR BHAVAN, GUWAHATI UNIT B-8, DISPUR-
781006, ASSAM

2:COMMISSIONER OF STATE TAX
ASSAM HAVING HIS OFFICE AT NEW KAR BHAVAN
GUWAHATI UNIT B-8
DISPUR- 781006
ASSAM

3:THE STATE OF ASSAM
REP. BY THE SECRETARY
FINANCE DEPTT
ASSAM SECRETARIAT
DISPUR- 781006

4:PRINCIPAL COMMISSIONER OF CENTRAL GST
ASSAM
HAVING HIS OFFICE AT GST
MACHKHOWA
NEAR AT ROAD FLYOVER
GUWAHATI- 781001

5:SASHI CHOWDHURY
HAVING HIS OFFICE AT 159 RABINDRA SARANI
5TH FLOOR

KOLKATA- 700007
WEST BENGAL

For the Petitioner : None appears
For the Respondents : Mr. B. Choudhury, Advocate.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
ORDER

02.08.2023

The present writ petition has been filed challenging the order for cancellation of Registration dated 27.08.2019 passed by the Commercial Tax Officer, (Superintendent of Taxes), Guwahati -B.

2. From a perusal of the said impugned order for cancellation of Registration, it transpires that the Petitioner was issued a show cause notice dated 27.08.2019 and a reply was filed on 28.08.2019. Pursuant thereto, the Commercial Tax Officer, (Superintendent of Taxes), Guwahati -B having examined the reply cancelled the Registration on the ground that the Petitioner herein who is the proprietor of M/S Vaishno Trading had given a statement in writing on 04.09.2019 to the effect that he does not know anything about the business transactions of the said firm i.e. M/S Vaishno Trading. In the said statement, he had also mentioned that one person namely Sashi Chowdhury had used his Pan Card and some other documents and was running the business activities in the name and style as M/S Vaishno Trading. It was further stated that the said trading so done was unlawful and with a fraudulent intention. Further to that, it was mentioned that the said firm have not paid all the due taxes and therefore the registration was cancelled to restrict further business activities and to prevent evasion of Government revenue.

3. From a perusal of the writ petition, it has been stated that the said order of cancellation of the Registration was done without affording an opportunity to the Petitioner and further stated that the facts were not taken into account in the proper perspective. At this stage, this Court finds it relevant to take note of the order dated 03.03.2012 passed in an Interlocutory Application which was registered and numbered as I.A. (Civil) No. 794/2021. This Court had vacated the interim order dated 14.02.2020 by taking into account that the impugned order of cancellation was preceded by a stage when an opportunity was granted to the Petitioner.

4. Mr. B. Choudhury, the learned counsel appearing on behalf of the Finance and Taxation Department of the Government Assam submitted that Section 107 of the Central Goods and Service Tax Act, 2017 provides an adequate and effective remedy to the Petitioner to assail the order for cancellation of the Registration. He further submitted that whether the facts on the basis of which the order for cancellation of Registration was passed were taken in the proper perspective or not would require an adjudication on the question of facts and as such it would be the Appellate Authority under Section 107 of CGST Act, 2017 would be the proper forum.

5. Upon hearing the learned counsel appearing for the Finance and Taxation Department of the Government Assam and also upon perusal of the materials on record, this Court is of the opinion that the order of cancellation of Registration was preceded with an opportunity of hearing which is apparent from a perusal of the impugned order for cancellation of the Registration itself inasmuch as in the impugned order, it mentioned that the show cause notice dated 27.08.2019 was issued to which the Petitioner had submitted a reply on 28.08.2019. Further to that, if the Petitioner had disputes with regard to the

facts recorded in the said order, it is the opinion of this Court, the same ought to have been done before the Appellate Authority under Section 107 of the Central Goods and Service Tax Act, 2017.

6. In that view of the matter, this Court does not find any merits in the instant writ petition for which the petition stands dismissed.

JUDGE

Comparing Assistant