**S/L 13**
16.09.2020
Ct. No. 5
*GB*

W.P.A 6311 of 2020
With
CAN 1 of 2020
(Old No. CAN 4804 of 2020)

Sunita Jalan
Vs.
Assistant Commissioner, Beliaghata Charge & Ors.

(Through Video Conference)

*Mr. Suryaneel Das.*
*... for the petitioner.*

*Mr. Abhratosh Majumdar,*
*Mr. Prithu Dudhoria,*
*Mr. Debasish Ghosh.*
*... for the State.*

In view of the urgency, the matter is taken up virtually. CAN 1 of 2020 (Old CAN No. 4804 of 2020) is disposed of.

The petitioner carries on business under the Trade Name of SAWARIYA STEEL INDUSTRIES. It is a proprietorship business. The petitioner carries on business from his office at 3C/H/5, Chhatu Babu Lane, Kolkata – 700014.

A show cause notice dated February 4, 2020 was served upon the petitioner asking him to show cause as to why his registration would not be cancelled as the petitioner/taxpayer was found non-functioning/not existing at the principal place of business. The petitioner admittedly received the show cause notice. The petitioner was required to answer within 7 days. It was provided that if the petitioner failed to reply within the stipulated date or failed to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records. Thereafter, an order of cancellation dated February 14, 2020 was passed and the petitioner was directed to pay the tax due.

It is the contention of the petitioner that the show cause notice was vague. The order of cancellation was passed with retrospective effect from October 26, 2019 and no opportunity of hearing was given to the petitioner. Aggrieved, the petitioner has moved this Court.

Mr. Majumdar, learned Additional Advocate General submits that the petitioner has invoked the writ jurisdiction of this Court without exhausting the alternative remedy prescribed under the Goods and Services Tax Act, 2017. He refers Sections 29, 30 and 107 of the said Act and Rule 23(1) of the GST Rules. According to Mr. Majumdar the show cause notice clearly stated the reason why the same was issued as the petitioner was not functioning at the registered place of business. According to Mr. Majumdar the reply to the show cause notice was required to be uploaded in the website and a hearing would have been given to him on the basis of the reply. As no reply was forthcoming, the order was passed on the understanding that the petitioner was not interested to contest the proceeding.

It is true that no hearing was given to the petitioner. It is also true that the order of cancellation is not a speaking one. However, the petitioner received such an order on February 14, 2020 and he has moved this Court in August, 2020.

Thus, I do not find any reason to invoke a high prerogative writ and allow the prayer of the petitioner to set aside the order of cancellation in view of the provisions of Sections 30 and 107. Section 30 of the GST Act provides that a party aggrieved by an order of cancellation may apply for revocation of cancellation. The apprehension of the petitioner that the entire claim would have to be deposited if the petitioner takes recourse to Section 30, is refuted by Mr. Majumdar. He submits that the petitioner is required to pay the amount, which is shown in his returns. The petitioner has annexed some returns to this application.

Thus, this Court does not think it fit to set aside the order of cancellation of registration at such a belated stage, specially as the period of limitation has been extended by the authorities. The petitioner shall exhaust the available remedy under the statute. The petitioner is at liberty to take such steps under the provisions of the statute. This Court has taken note of the fact that fiscal statutes have to be strictly construed and in such a situation where public revenue is involved, the Court should be slow to interfere especially when there are alternative efficacious remedies provided in the statute itself. If the petitioner takes recourse to the provisions of the statute, then the authority shall consider all the aspects as discussed hereinabove including the failure to give an opportunity of hearing to the petitioner and pass its order in accordance with law. The petitioner submits that the report on the basis of which the order impugned was passed was not provided to him. He may pray before the authority for the same and the authority shall look into all the aspects of the matter independently.

Accordingly, WPA 6311 of 2020 is disposed of.

There will be, however, no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

**(Shampa Sarkar, J.)**