19.02.2021
Sl. No.56
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 9882 of 2020

Ushika Overseas Private Limited & Anr.
Vs.
Superintendent of Central Tax, Range-IV, Burrabazar, Division, CGST & CX, Kolkata North, Commissionerate & ors.

Mr. Vinay Shraff,
Mr. Himangshu Kr. Ray
….for the petitioners.

Mr. Amitabrata Ray
….for the respondent no.1.

Mr. Abhratosh Majumdar, Ld. AAG,
Mr. Soumitra Mukherjee,
Mr. Avra Mazumder
….for the State.

The petitioners have challenged the order for cancellation of the petitioners' Goods and Services Tax Registration dated 18th November, 2020 passed by the Proper Officer, being the Superintendent, Alipore, CGST under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act). This order dated 18th November, 2020 was passed after issuance of a show cause notice for cancellation of registration dated 12th November, 2020 and considering the petitioners' reply thereto dated 17th November, 2020.

The petitioners say that the cancellation order has been made on grounds which did not find place in the show cause notice. The order of cancellation dated 18th November, 2020, according to the petitioners, is, therefor, arbitrary and without jurisdiction in view of the fact that the proper officer should have considered the petitioners' case strictly in accordance with the charges made out in the show cause notice.

It appears from the charges made out in the show cause notice, that the petitioners have obtained registration certificate by misrepresentation and fraud. The order of cancellation has been made on the basis that on investigation conducted by the HQ (A/E) against the petitioners, it has revealed that there is no existence of the principal place of business of the assessee.

Considering the charges made in the show cause notice and those in the order of cancellation, it appears that certain fact finding acts have been undertaken by the Proper Officer. The writ Court cannot go into the correctness of fact finding exercise said to have been undertaken by the Proper Officer. Since an alternative remedy in form of appeal under Section 107 of the CGST Act is available to the petitioners, which is more competent to deal with the fact finding issues, I am not inclined to entertain the instant writ petition.

The petitioners are permitted to approach the Appellate Authority under Section 107 of the CGST Act within 2nd March, 2021.

In the event the petitioners approach the appropriate Appellate Authority within the time frame, the said authority shall entertain the petitioners' appeal without going into the point of limitation inasmuch as the order of cancellation is dated 18th November, 2020 and the writ petition was filed on 9th December, 2020 before expiry of the three months period available for preferring an appeal and that a further 30 days extension can be granted on sufficient cause being shown. The petitioners shall also be entitled to take all points available to the petitioners including those taken in the writ petition.

The Appellate Authority on being approached in time shall dispose of the petitioners' appeal within a period of two months from the date of the petitioners preferring the appeal.

I have not gone into the merits of the matter and the observations made hereinabove are only for the purpose of adjudicating the instant writ petition.

The Appellate Authority should not be influenced by any observations made hereinabove.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the necessary formalities.

(**Arindam Mukherjee, J.**)