OD - 4

ORDER SHEET

WPO 54 of 2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SKYSCRAPPERS INFRACON PRIVATE LIMITED
VS.
THE ASSISTANT COMMISSIONER, GOODS AND SERVICE TAX, BHABANIPUR, KOLKATA (SOUTH), WEST BENGAL

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 15th February, 2021.

Appearance:
Mr. Soumyajit Dasgupta, Adv.
Mr. Siddhartha Sharma, Adv.
Ms. Shalini Basu, Adv.
...for the petitioner

Mr. Abhratosh Majumder, Ld. AAG.
Md. Talay M. Siddiqui, Adv.
Mr. Avra Mazumder, Adv.
...for the State

Mr. Kaushik Dey, Adv.
Mr. Tapan Bhanja, Adv.
...for the respondent no.2

Ms. Sumitra Das, Adv.
...for the respondent no.4.

The Court : Affidavit-of-service filed in Court today is taken on record.

The petitioner has, *inter alia,* challenged a show cause notice dated 2nd December, 2020 for cancellation of the Goods and Service Tax (GST) registration of the petitioner issued by the Assistant Commissioner, Bhabanipur, Kolkata South (respondent no.1) in Form GST REG-17. By the said notice the petitioner's registration has also been suspended with effect from 2nd December, 2020. The petitioner says that this notice is contrary to the provision of Section 29(2) and rule 21A of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the 'CGST Act'). So far as the suspension is concerned sub-rule 2 of rule 21A, according to the petitioner, refers to a personal hearing before the suspension of registration under the second proviso to Section 29(2) of the CGST Act. But no hearing was given to the petitioner before the registration was suspended with effect from 2nd December, 2020.

Rule 21A of CGST rules have been amended by notification no.94/2020-Central Tax dated 22nd December, 2020. The hearing which was provided under sub-rule 2 of Rule 21A has been omitted with effect from 22nd December, 2020.

Admittedly, when the notice was issued on 2nd December, 2020, the rule 21A was not amended and as such a hearing was required to be given to the petitioner prior to the registration of the petitioner being suspended. The petitioner has also referred to another notice dated 1st February, 2021 and alleges that the same has been also done in an unlawful manner.

On behalf of the respondent nos. 1 and 2 it is submitted that the hearing provided in Section 29 is regarding the cancellation and not for suspension but fairly admits that rule 21A provides for a hearing prior to suspension. The notice dated 1st February, 2021 according to the respondent nos.1 and 2 has been issued by the Central GST authorities to which the said respondents are not concerned.

It appears from the record that the petitioner has already challenged show cause notice for cancellation of registration dated 2nd December, 2020 by filing reply thereto. This part has to be adjudicated by the concerned authority empowered under the statute in accordance with law. This Court, therefor, does not wish to enter the domain of the authority and leaves all points in respect thereof open. So far as the personal hearing part before suspension is concerned the same is a statutory requirement which having not been complied with, the suspension part as indicated in the show cause notice for cancellation dated 2nd December, 2020 is bad in law and is set aside.

The authority concerned is directed to give a personal hearing to the petitioner in terms of Section 29(2) of the CGST Act for the purpose of adjudicating the cancellation issue in terms of show cause notice for cancellation dated 2nd December, 2020. The entire exercise shall be completed within a period of three weeks from date. The authority concerned shall issue a specific notice informing the petitioner about the date and time of hearing well in advance and the petitioner co-operate in the hearing. The concerned officer upon hearing the petitioner shall pass a reasoned order and will be free to pass appropriate orders, if the petitioner does not participate at the hearing.

Nothing further remains to be adjudicated in this writ petition, the same is accordingly disposed of.

Since I have not called for affidavits, the allegations contained in the petition are deemed to have not been admitted by the respondents.

(ARINDAM MUKHERJEE, J.)

sp3