08 08.03.2022
RP Ct. No. 16
AN

MAT 80 of 2022
with
IA No. CAN 1 of 2022

Raj Kumar Mondal
vs.
Assistant Commissioner of State Tax Monoharkatra and
N. S. Road Charge & anr.

Mr. Anil Kumar Dugar
Mr. Rituraj Chakraborty
Mr. Rajarshi Chatterjee
… for the appellant

Mr. Partha Chakraborty
… for the U.O.I.

Mr. Anirban Ray
Mr. Soumitra Mukherjee
Mr. Debasish Ghosh

This intra court appeal was directed against an order dated 19.01.2022 in WPA 507/2022 (Raj Kumar Mondal vs. Assistant Commissioner of State Tax Monoharkatra and N. S. Road Charge & anr.). By the said writ petition the appellant challenged the order of cancellation of registration dated 03.01.2022 granted to the appellant under the West Bengal Goods and Services Tax Act, 2017 (in short, the said Act) and the rules framed therein.

The appellant approached the learned writ court challenging the order of cancellation of registration under the said Act on the principle ground that the order is in violation of principles of natural justice. The learned writ court opined that the appellant should avail the alternative remedy available under Section 30 of the said

Act and accordingly the writ petition was dismissed.

We have elaborately heard learned counsel for the parties present.

The rule of alternative remedy is undoubtedly the rule which is to be enforced by the courts of law, more particularly, in taxation statutes. However, the courts have also drawn exception to cases where the aggrieved person need not be relegated to avail alternative remedy under certain circumstances one such circumstance which has been carved out is when the aggrieved party states that there has been total violation of violation of principles of natural justice. In fact, the appellant is before us contending that there is total violation of principles of natural justice before the impugned order of cancellation of registration was passed, the order mentioned about several details and information, copies of which were not furnished to the appellant nor the appellant was put on notice about such allegations. If such is the case, the court can exercise jurisdiction under Article 226 of the Constitution of India inspite of availability of alternative remedy.

Therefore, we are to examine as to whether the contentions raised by the appellant that there has been violation of principles of natural justice before passing of order of cancellation is made out. The respondents issued show cause notice dated 18.11.2021. The allegation in the show cause notice is that the principle place of business of the appellant was not found at the time of visit. The appellant was granted 7 days time for submitting his reply and directed to appear before the authority on 26.11.2021 at 13.30 hours. The show cause notice further stated that if the appellant fails to file a reply within the stipulated date or fails to appear on the appointed date and time the case will be decided ex parte on the basis of available records on merits.

The appellant would further contend that after receipt of show cause notice, their authorized representative visited the Office of the respondent authority and under one pretext or the other he was not entertained and not allowed to meet the Officer. Further the appellant submitted that a letter dated 02.12.2021 which was sent by Speed Post on 06.12.2021 in which they have stated to be carrying on business in the place in question and allegation in the show cause notice is not tenable. On 03.01.2022 the order for cancellation of registration was uploaded in the official website by the respondent which referred to an alleged reply sent by the appellant dated 02.12.2021 in response to the show cause notice dated 18.11.2021 and also stated that no reply to the show cause notice was submitted and, therefore, the registration is cancelled with retrospective effect from the date on which it was granted that is 01.07.2017. Thereafter, another order dated 03.01.2022 has been passed by the authority and communicated to the appellant. In the order dated 03.01.2022, we find that there are several allegations against the appellant and certain photographs have been taken and pasted therein. The respondent has taken note of the electricity consumption of the appellant's place of business and has concluded that the appellant is a non-existing dealer and is not functioning in the place of business shown in the certificate of registration.

The appellant, before the learned writ court and before us produced a bunch of documents which include trade license, license under the FSS Act, 2006, bank statements, trade mark registration, photographs and other details to show that they are carrying on business not only in the place mentioned in the license but in the additional place of business also for which the records of the respondent department itself have been placed before us. If such is the contention raised by the appellant, it is to be seen as to whether the appellant should be relegated to avail the alternative remedy. The allegation in the show cause notice dated 18.11.2021 is that the dealer was not found in the principal place of business at the time of field visit. The order of cancellation of registration in Form GST REG–19 dated 03.01.2022 refers to alleged reply dated 01.12.2021.

In the next sentence, it has been mentioned that no reply has been submitted by the appellant to the said show cause notice. On 03.01.2022, when the order of cancellation has been passed wherein there are several allegations and substantial point of allegations are beyond the allegation contained in the show cause notice dated

18.11.2021, therefore, it is clear that there has been violation of principles of natural justice and the authority has taken a note of certain information which was not made available to the appellant nor there was any show cause notice based on such allegations.

Learned counsel for the respondent would submit that since no reply to the show cause notice was given, the authority has proceeded to pass the order of cancellation of registration. Further, if the appellant is aggrieved he can seek for revocation of cancellation of registration by invoking Section 30 of the said Act. As pointed out earlier, the allegation in the show cause notice dated 18.11.2021 is not the sole basis on which the registration has been cancelled by order dated 03.01.2022. The order of cancellation is largely based upon a site visit. The materials or information gathered during the site visit were not informed to the appellant. This also amounts to serious violation of principles of natural justice. Opportunity to be provided to the appellant before cancellation as provided under the Act should be an effective opportunity and not illusory.

In the case in hand, we have no hesitation to hold that the appellant has not been given effective opportunity to put forth his contention and the order of cancellation of registration dated 03.01.2022 is based on certain information which was solely within the knowledge of the respondents and the appellant had not been put on notice of such allegation. That apart, cancellation of registration with retrospective effect is also bad in law and, more particularly, when there is no such proposal in the show cause notice dated 18.11.2021.

Thus, we are of the clear view that the appellant was entitled to invoke the extraordinary jurisdiction of this court under Article 226 of the Constitution of India and need not be relegated to the alternative remedy under Section 30 of the said Act.

In the result, the appeal and the connected application are allowed. The order passed in the writ petition is set aside and the order of cancellation dated 03.01.2022 is quashed and the respondents are directed to restore the certificate of registration to appellant within 48 hours from the date of receipt of the server copy of this order. Consequently, the writ petition also stands allowed.

We grant liberty to the respondents to issue fresh show cause notice if there is need to do so.

**(T. S. Sivagnanam, J.)**

**(Hiranmay Bhattacharyya, J.)**