

07 22.02.2022
RP Ct. No. 16
AN

MAT 90 of 2022
With
IA No. CAN 1 of 2022

Hindustan Traders & Anr.
vs.
State of West Bengal & Ors.

Mr. Suryaneel Das
Mr. Kaushal Agarwal

... for the appellants

Mr. Anirban Ray, ld. G.P.
Mr. T.M. Siddiqui
Mr. N. Chatterjee

... for the respondents

This appeal is directed against an order dated 27.01.2022 passed in WPA 299 of 2022 refusing to grant interim relief sought for by the appellants and the learned Single Judge has granted the respondents to file affidavit-in-opposition within a time frame and directed the parties to be ready for arguments.

We have heard the learned counsel for the parties at length and by consent of the parties we take up for consideration the present intra-Court appeal as well as the writ petition being WPA 299 of 2022.

The appellants were aggrieved by the order passed by the third respondent dated 27.12.2021 ordering cancellation of registration granted to the appellant by invoking power under Section 29 of WBGST Act, 2017. The learned counsel for the appellants would submit that the order of cancellation impugned in the writ petition is wholly illegal for the reasons that earlier the appellants were intimated to show cause for cancellation of their registration. The appellants submitted their reply on 28.08.2021 and an order of cancellation was passed on 10.09.2021.

Thereafter, the petitioners/appellants applied for revocation of the cancellation of registration by filing an application under Section 30 of the WBSGST Act, 2017. The application was considered and by order dated 30.11.2021 cancellation of registration was revoked and such order came for digital signature at 4.45 p.m. It is submitted by the learned counsel for the appellants that it was curious enough to them that on the selfsame day another show cause notice was issued to appellants proposing cancellation of the same for the same cause of action. The appellant had questioned the jurisdiction of the authority and pleaded that the show cause notice was based on certain statement ascertained from tea stall owner from that area. The tea stall owner is to be produced for cross-examination amongst other persons. By summons dated 8.12.2021 the appellant was directed to appear before the third respondent. In the summons the following documents were directed to be produced by the appellants.

1. Rent Agreement
2. Trade Licence
3. Inward & Outward supply register
4. Stock Register
5. Returns under IT Act
6. Transport documents

The appellants had appeared and reiterated their submission and further submitted that the petitioners/appellants have their place of business at the first floor of the building whereas the photographs appended to the show cause notice show the ground floor premises and there are other factual issues. The appellants had also pleaded that due to Covid-19 pandemic the appellants could not come to the office premises to carry on his trading activity and prayed for restoration of the registration. The third

respondent not being satisfied with the reply cancelled the registration by a speaking order dated 27.12.2021 which is impugned in the writ petition. After the impugned order came to be passed the learned counsel for the appellants submitted that the appellants had submitted their reply on 8.12.2021. In this regard a copy of the representation is appended in page nos.74-76 of the stay application.

Learned government counsel submitted that this document was initially not annexed to the writ petition but by way of supplementary affidavit the said purported document was produced before the learned Single Judge and the said communication is undated. The appellants have not been able to prove of having sent this communication and received by the third respondent. No credence can be given to the reply at page nos.74-76 of the said application.

Considering the facts and circumstances of the case, we are of the view that the disputed questions of facts cannot be adjudicated in the writ petition and that too by way of filing affidavits. Furthermore, under the WBSGST Act, 2017 the appellants have effective efficacious remedy. If the appellants seek for revocation of the order of cancellation they can do so by filing an application under Section 30 of the WBSGST Act, 2017 or if the appellants intend to prefer an appeal it is open to them to do so by taking advantage of Section 107 of WBSGST Act, 2017. Thus, it is open to the appellants to take any of the remedies available. We grant liberty to the appellants to raise all contentions before the said authority by way of an application including the plea that they are carrying on business and that the statements recorded from a nearby tea stall owner is not sustainable without producing him for cross-examination, his

statement cannot be relied on. That apart the appellants should be given an opportunity to appear before the authority to establish that the appellants had a going concern. In fact, in the summons issued by the authority dated 8th December, 2021 the third respondent has specifically called for certain documents as mentioned hereinabove. Therefore, it is open to the appellants to pursue their claim before the appropriate authority in accordance with law.

With the above observations the appeal and the connected application stand disposed of. Consequently writ petition is dismissed.

Since the writ petition was filed well before expiry of 30 days from the date on which the impugned order of cancellation was communicated to the appellants and the period during which the writ petition was pending and till the receipt of server copy of this order shall be excluded while computing the limitation by the concerned authority.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)