Item No.4.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 12.05.2022

DELIVERED ON:12.05.2022

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

MAT 456 of 2022
With
I.A. No.CAN 1 of 2022

Rohit Varma.
VERSUS
Assistant Commissioner, Burtola, Kolkata North & Ors.

Appearance:-
Mr. Arya Das .....**for the appellant.**

Md. T. M. Siddique,
Mr. Soumitra Mukherjee,
Mr. Debasish Ghosh .. **for the respondents.**

JUDGMENT

(Judgment of the Court was delivered by* T.S. SIVAGNANAM, *J.)

1. This intra Court appeal filed by the writ petitioner is directed against the order dated 15th March, 2022 in W.P.A.

No.4406 of 2022. The appellant has filed the writ petition challenging the order passed by the Joint Commissioner, Commercial Taxes, Posta Bazar, Burtola Charge, Salt Lake, Kolkata dated 30th November, 2021 on an appeal filed by the appellant challenging the rejection of the application for revocation of cancellation of registration under the WBGST Act, 2017. The appellate authority after examining certain facts came to the conclusion that the appellant did not carry any business from the declared place and the documents filed by the appellant in support of the same are not correct and accordingly, affirmed the cancellation of the registration made under Section 29(2)(e) of the Act read with Rule 21 of the relevant Rules.

2. The learned single Bench by the impugned order held that the issues raised by the appellant are all disputed questions of fact, which cannot be gone into in a writ petition. Aggrieved by such order, the appellant is before us by way of this appeal.

3. We have heard Mr. Arya Das, learned advocate for the appellant and Mr. Debasish Ghosh, learned advocate appearing for the respondents.

4. Firstly, we note that as against the order passed by the Joint Commissioner of Commercial Taxes dated 30th November, 2021, the appellant has no other alternative remedy provided under the Act for him to avail questioning the correctness of the said order. Therefore, the appellant had, in our opinion, rightly invoked the jurisdiction of this Court under Article 226 of the Constitution of India. The Court while exercising the extraordinary jurisdiction is entitled to examine as to whether the decision making process was proper, whether there was violation of principles of natural justice or whether the action was vitiated on account of lack of jurisdiction, etc. Therefore, to state that the writ petition cannot be entertained on the ground, which has been mentioned in the impugned order does not reflect the correct legal position. Therefore, we are of the clear view that the order passed in the writ petition requires to be set aside.

5. We are conscious of the fact that the writ petition was dismissed at the admission stage and no affidavit was called for from the respondents. Therefore, we have heard the learned Advocates appearing for the parties on the merits of the matter.

6. The learned Advocate appearing for the appellant submitted that though the learned Writ Court had briefly noted the factual position, the legal issue, which had been canvassed by the appellant before us has not been considered. The legal issue, which us canvassed before us is on the following grounds.

7. The appellant was granted registration under the provisions of the West Bengal Value Added Tax Act, 2003 dated 27th August, 2013. The appellant has been enjoying the benefit of such registration ever since 2013. After coming into force of the WBGST Act, the licence migrated under the new provisions. On 10th September, 2018, a show cause notice was issued to the appellant by the Deputy Commissioner of GST calling upon the appellant to show cause as to why the registration should not be cancelled as it has been obtained by means of fraud, wilful mistatement or suppression of facts. The appellant did not avail the remedy granted and did not appear before the authority and therefore, the registration was cancelled by order dated 5th October, 2018. Thereafter, the appellant had filed an application dated 4th November, 2018 for revocation of the cancellation of registration, which application was favourably

considered and by an order dated 4th January, 2021, the registration was restored. Thereafter, within a period of three days, another show cause notice dated 7th January, 2021 was issued on the same ground as the earlier show cause notice dated 10th September, 2018. The appellant submitted the reply. However, the registration was cancelled by an order dated 13th February, 2021 expressing doubt on the documents produced by the appellant to show that he was carrying on business in the premises, which has been shown in the registration certificate.

8. Thereafter, the appellant filed an application for revocation of the said order, which was also dismissed after which an appeal was preferred before the Joint Commissioner, which was dismissed.

9. The learned Advocate appearing for the appellant would submit that the second show cause notice dated 7th January, 2021 was without jurisdiction as for the very same allegation an earlier show cause notice was issued and thereafter an ex parte order of cancellation was passed. The appellant had filed an application for revocation of such order, which was favourably considered and the registration was restored by order dated 4th

January, 2021 and having done so, the authority cannot once again issue another show cause notice for the same set of facts.

10. In our considered view, this legal issue can be left open for the present as we are satisfied that the procedure adopted by the authority while cancelling the registration was thoroughly flawed. Admittedly, when an inspection was conducted by the officers of the department, one of the person, who represented to be the receptionist of the building affirmed that one Mr. Dilip Kumar Agarwal, who was the power of attorney agent of the appellant, Mr. Rohit Varma, used to come to the premises and carried on certain business activities. Nevertheless, the said receptionist could not recognise Mr. Rohit Varma whose photograph appears to have been shown to the said receptionist. This report in the submission of the learned Advocate for the appellant is prima facie proved to show that the business was carried on in the said premises. In any event, the authority while cancelling the registration could not have solely relied upon a statement made by the receptionist of the building and merely because she could not recognise Mr. Rohit Varma's photograph could not have been the reason for cancellation. The proper course that should have been adopted is to issue a notice

directing Mr. Rohit Varma and Mr. Dilip Kumar Agarwal to be personally present in the office of the respondent and the landlord of the premises also should have been summoned. If all the three parties are present, the correct facts will come to light. Had this procedure been adopted, the truth would have been established and a proper order could have been passed either way.

11. In the light of the above, we are of the view that the matter requires to be remanded to the original authority, namely, first respondent to redo the matter by conducting a proper enquiry. In the result, the appeal is allowed. The order passed in the writ petition is set aside. Consequently, the writ petition is disposed of by setting aside the order passed by the Joint Commissioner, respondent no.3 and the matter is remanded back to the first respondent for conducting a fresh enquiry. As a result of the same, the order dated 17th March, 2021 directing rejection of application for revocation of cancellation is also set aside and the said application is restored to the file of the first respondent for conducting fresh enquiry.

12. The first respondent is directed to issue notice to the proprietor of the appellant, Mr. Rohit Varma, his power of attorney agent, Mr. Dilip Kumar Agarwal and the landlord of the premises in which the appellant is stated to have been carrying on business. The parties shall be directed to appear in person before the first respondent on 20th June, 2022 at 11.00 A.M. in the office of the first respondent.

13. It is made clear that the appellant or his power of attorney agent cannot take any stand that the notice was not properly served on them as it is in their appeal, this order is being passed and therefore, the appellant and the power of attorney agent shall positively appear before the authority on 20th June, 2022.

14. The first respondent is directed to depute one of his officers to effect personal service of the hearing notice on the landlord of the building to ensure that the landlord is present on the said date. On the said date, the first respondent shall enquire into the matter, receive whatever documents the parties may produce and pass a reasoned order on merits and in accordance with law.

15. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB(AR.C)