Item no. 01

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Supratim Bhattacharya

MAT 741 of 2022
with
IA No. CAN 1 of 2022
IA No. CAN 2 of 2022

Santanu Mondal
vs.
The Superintendent, Central Goods and Service Tax,
Asansol Division, Range-IV & Ors.

Appearance:

For the Appellant	:	Mr. Sandip Choraria Mr. Himangshu Kumar Ray Mr. Rajarshi Chatterjee
For the State	:	Mr. A. Ray, ld. G.P. Md. T. M. Siddiqui, ld. A.G.P. Mr. D. Ghosh Mr. D. Sahu
For respondent 1, 2 & 3	:	Mr. Uday Shankar Bhattacharyya Ms. Ekta Sinha
Heard on	:	21.09.2022
Judgment on	:	21.09.2022

T.S. Sivagnanam J.:

1) This intra court appeal filed by the writ petitioner is directed against the order passed on 23.03.2022 in WPA 4910/2022. The said writ petition was filed by the appellant challenging an order passed by the appellate authority, namely, the Additional Commissioner of CGST, Central Excise, Siliguri Appellate Commissionerate rejecting the appeal filed by the appellant against the order passed by the Assistant Commissioner, CGST & Central Excise, Asansol-I Division dated 3rd February, 2021 by which the application filed by the appellant for restoration of its registration was rejected. The reason for rejection of such application was on the ground that it has been filed beyond the stipulated period under statute. The fact remains that the asseesee filed his return on 09.12.2020 and 17.01.2021 and remitted the tax and the interest as computed by the assessing authority.

2) The application for revocation of cancellation of registration was made on 16.12.2020 to restore the registration, which was cancelled on 29.11.2019. Admittedly, the appellant will not be entitled to the benefit of the circular issued by the Department being notification no. 34 of 2021 dated 29.08.2021 as well as 16.09.2021 which was pursuant to the order of the Hon'ble Supreme Court extending the period of limitation for filing appeals under various statutes but the fact remains that the appellant had contended before the appellate authority

that the cancellation of registration was in violation of the principles of natural justice inasmuch as the assessing authority ought to have taken into consideration the returns filed by the appellant and the tax and interest remitted, though belatedly. The order rejecting the application for revocation of cancellation dated 03.03.2021 is a single line order thereby stating that the assessee has not replied to the show cause notice dated 13.01.2021. However, the fact remains that before the said notice dated 09.12.2020, the assessee had filed GSTR-3B returns upto November 2019 and this was filed prior to the application for revocation of cancellation which was filed on 16.12.2020.

3) Therefore, in the considered view of this Court, the Assessing Authority, being the Assistant Commissioner, Asansol should take into consideration this fact and examine as to whether the registration of the appellant could be restored or not. Since the Appellate Authority has solely proceeded on the ground of limitation without touching the above mentioned facts, we are of the considered view that the matter should be remanded back to the original authority for fresh consideration.

4) In the light of the above, the appeal is **allowed** and the order passed in the writ petition is set aside and consequently the order passed by the Appellate Authority as well as the order passed by the Original Authority dated 3rd February, 2021 is set aside and the application for revocation of cancellation of registration stands revived to

the file of the Assistant Commissioner, CGST & Central Excise, Assansol-I Division and the said authority shall afford an opportunity of personal hearing to the appellant considering the returns filed, tax and interest remitted by him and pass a fresh order on merits and in accordance with law within a period of six weeks from the date of receipt of the server copy of this order.

4) Consequently, the connected applications stand **disposed of**. No costs.

(T. S. Sivagnanam, J.)

(Supratim Bhattacharya, J.)

Raja Pal/Amitava (AR. CT.)