

Item no. 10

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice T.S. Sivagnanam
And
The Hon'ble Justice Prasenjit Biswas**

**MAT 1376 of 2022
with
IA No. CAN 1 of 2022**

Bisweswar Midhya, Proprietor of Midhya Construction

vs.

The Superintendent, CGST & CX Range V, Haldia II Division,
Haldia CGST & CX Commissionerate & ors.

For the Appellant	:	Mr. Ankit Kanodia Ms. Megha Agarwal Mr. Jitesh Sah
For the CGST Authority	:	Mr. Bhaskar Prasad Banerjee Ms. Rajarshree Venkat Kundalia Ms. Ekta Sinha Mr. Tapan Bhanja
For UOI	:	Ms. Sanjukta Gupta

Heard on : 01.09.2022

Judgment on : 01.09.2022

T.S. Sivagnanam J.:

- 1) Heard the learned Counsel for the parties.
- 2) This intra-court appeal is directed against an order dated 22.08.2022 passed in WPA No.18134 of 2022. The writ petition is still pending before the learned Single Bench and the direction to file affidavits has been issued. The appellant is aggrieved by non-granting of any interim order pending disposal of the writ petition.
- 3) The controversy involved in the writ petition lies in a very narrow campus. Therefore, with the consent of the parties the writ petition and the appeal as well as connected application are taken up together for disposal and are accordingly disposed of by this common order.
- 4) The appellant had filed the writ petition challenging a show cause notice for cancellation of registration granted to the appellant dated 21.07.2022. The primary ground on which the show cause notice was challenged is that there is no final order of adjudication passed by the competent authority quantifying the tax liability payable by the appellant. Consequently the show cause to cancel the registration on the alleged ground of failure to pay tax and penalty would not arise. In the stay application a bunch of documents have been annexed which show that from January 10, 2020 the Anti-Evasion Wing and the Audit Department of the respondent are behind the appellant and repeated summons have

been issued by the authorities on various dates. But the fact remains that till date no show cause notice has been issued to the appellant either by the Anti-Evasion Wing or the Audit Department of the respondent department. If that be so the liability is yet to be quantified. Quantification of liability arises after issuance of show cause notice and following the process of adjudication. That apart, it is not clear as to why the Department has been prolonging the matter for such a long period without taking the issue to its logical end. The matter can attain finality if a show cause notice is issued by the appropriate authority and adjudication is done by the competent authority. This procedure undoubtedly has not been followed in the case on hand. If such be the factual position a show cause notice proposing to cancel the registration of the appellant would not be sustainable. Furthermore, we note that pending consideration of the show cause notice for cancellation the appellant's registration has been suspended.

- 5) In our view suspension of a license of a dealer will be counter-productive and would work against the interest the revenue. We say so because if the registration of a dealer is cancelled, the dealer cannot carry on its business in the sense that no invoice can be raised by the dealer. This would ultimately impact the recovery of taxes. Therefore, the respondent department has to take a pragmatic view in the matter because a taxpayer is not to be

treated as a person hostile to the department. Undoubtedly if the taxpayer has adopted dubious process to evade payment tax then he has to be dealt with firmly.

- 6) From the list of dates and events we find that summons were repeatedly issued to the appellant and the appellant has been responding to the summons by submitting representations to the department. Furthermore, it is not clear as to why the authorities did not proceed further pursuant to the summons. We wish to say nothing more about the said issue and leave it to the respondent authorities.
- 7) In the light of the above, we are of the view that suspension of the appellant's registration should be revoked forthwith with a direction to the appropriate authority to issue show cause notice within a time frame and take up the adjudication proceeding. We are not here to advise the respondents as to how they have to act. It is open to them to proceed in accordance with law in the event tax has not been remitted by a dealer at the appropriate rate or there has been escapement of assessment or under assessment.
- 8) In the light of the above discussion, the appeal along with CAN 1 of 2022 as well as the writ petition stand **disposed of** by directing the respondent authority to forthwith revoke the suspension of the appellant's license and with a further direction to the respondent authority to issue show cause notice within seven days from the

date of receipt of the server copy of this order. The appellant shall be given a reasonable time to submit his objection as against the show cause notice. Thereafter, the show cause notice shall be adjudicated and a reasoned order be passed on merits and in accordance with law.

- 9) We make it clear that we have not gone into the merits of the contentions raised on either side and it is open to the adjudicating authority to adjudicate upon all issues which are canvassed before the said authority. There shall, however, be no order as to costs.

(T. S. Sivagnanam, J.)

(Prasenjit Biswas, J.)