

Item No.5.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

HEARD ON: 07.02.2023

DELIVERED ON: 07.02.2023

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. 35 of 2023

Sanjay Kumar Goyal.

Vs.

The State Tax Officer, Jorasanko and Jorabagan Charge & Ors.

Appearance:-

**Ms. Rita Mukherjee,
Mr. Ghanshyam Jha**

...

for the appellant.

**Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Varun Kothari**

....

for the respondents.

JUDGMENT

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

1. This intra-Court appeal is directed against the order dated 22nd November, 2022 in W.P.A. No.23967 of 2022. The appellant had filed the writ petition challenging an order passed by the authority cancelling the appellant's registration on the ground that the registration was obtained by the appellant committing fraud, suppression of facts and by making willful misstatement. The appellant had filed the reply to the show cause notice enclosing the copy of the trade licence, rent receipt, rental agreement and contended that the appellant has been carrying on business in the said premises ever since 2004 and have been regularly filing the returns and paying taxes. That apart, the appellant has got three other places of business, which are also registered with the department. The authority rejected the explanation offered and cancelled the licence largely relying upon a report dated 25th August, 2022 submitted by the State Tax Officer stating that in the said premises, there has been no semblance of any business activity and appears to have been used as a residential premises.

2. The learned Advocate appearing for the appellant would vehemently contend that it is not clear as to on what basis such a report was drawn when there are sufficient documentary

evidence to establish that the appellant was / is carrying on business in the said premises apart from other places of business, which are also registered.

3. The learned Single Bench dismissed the writ petition on the ground of alternate remedy. Aggrieved by the same, the appellant has filed the present appeal.

4. Admittedly, the issues, which are now pointed out by the appellant in this appeal are all factual or in other words, they are disputed questions of fact. Therefore, it is but appropriate for the appellant to avail the remedies, which are available under the Act and not be permitted to bypass those remedies as the authorities before whom the appellant would be entitled to go questioning the correctness of the order of cancellation will be able to appreciate or reappraise the factual position and then take a decision in the matter.

5. Thus, we are of the view that the finding rendered by the learned Single Bench in this regard cannot be faulted. However, we intend issuing appropriate directions so that the appellant has an identical opportunity to establish his case that he is

carrying on business in the said premises for which purpose the following directions are issued.

6. In the result, this appeal is disposed of by directing the appellant to file an application before the authority for revocation of the order of cancellation. Upon such application being filed, the authority shall cause an inspection of the premises in question after notice to the appellant and during such inspection, the appellant shall produce documentary evidence to establish that the business activities are being carried on in the premises.

7. The appellant is also at liberty to make written submissions. After considering the submissions made by the appellant, the authority shall pass an appropriate order on merits and in accordance with law.

8. The abovesaid exercise shall be commenced and completed within a period of 15 days from the date on which the appellant files an application for revocation of the order of cancellation.

9. Needless to state that the appellant should not seek any unnecessary adjournment and the appellant should cooperate in the inspection, which is to be conducted by the authority in terms of the above direction.

10. There shall be no order as to costs.

11. 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)