**Item No.6.**

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

HEARD ON: 20.01.2023

DELIVERED ON: 20.01.2023

**CORAM:**

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

**AND**

**THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. No.2051 of 2022**
**with**
**I.A. No.CAN 1 of 2022**

**Monirul Islam.**
**Vs.**
**State of West Bengal & Ors.**

**Appearance:-**
**Ms. Sweta Mukherjee,**
**Mr. Arup Sarkar ... for the appellant.**

**Mr. T. M. Siddique,**
**Mr. Debasish Ghosh,**
**Mr. Nilotpal Chatterjee**
**Mr. V. Kothari ... for the State.**

***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 20th December, 2022 in W.P.A. No.27835 of 2022. In the said writ petition, the appellant had challenged the order passed by the appellate authority under the provisions of the WBGST Act dated 25th November, 2022 by which the appeal petition was dismissed as barred by time. The said appeal petition was filed challenging the order dated 24th October, 2021 for cancelling the registration granted from 1st July, 2017.

2. It is true that the appellant was not vigilant in filing the appeal before the appellate authority within the period of limitation. On a perusal of the order of cancellation of the registration, it is seen that the appellant had submitted his reply dated 3rd November, 2021 to the show cause notice dated 24th October, 2021. However, the same order states that no reply to show cause notice has been submitted. This mistake is sought to be explained by the learned Government counsel stating that it is a system generated order.

3. In any event, whether it is an order passed by an authority in the physical form or an auto generated order, there should be application of mind. From the order dated 24th October, 2021, we

are able to see that there has been no proper application of mind on the part of the authority while cancelling the registration. In any event, the appellant had the benefit of registration from 2017 onwards and the appellant admits that he could not remit the tax and that he is a small time dealer and due to financial constraints, could not remit the taxes and at present, the appellant is ready and willing to remit the taxes along with the interest for belated payment and prays that the registration may be restored.

4. Considering the peculiar facts and circumstances, we are inclined to grant reliefs to the appellant. In the result, the appeal is allowed along with the connected application with the following order.

5. The order of cancellation of registration dated 24th October, 2021 is set aside and the appellant is granted 10 days' time from the date of receipt of the server copy of this judgment and order to pay the entire tax due together with interest and other charges, if any and if the same is complied with, the assessing authority shall restore the registration granted to the appellant in accordance with law.

6. There shall be no order as to costs.

7. 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)