

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA 559 of 2023

Kousik Das

Versus

Assistant Commissioner of State Tax, Siliguri

Charge & Ors.

Mr. Sandip Choraria
Mr. Rajeev Parik
Ms. Esha Acharya

.....For the Petitioner.

Mr. Subir Kumar Saha, Ld. AGP
Mr. Bikramaditya Ghosh

.....For the State.

Hearing Concluded On : 12.06.2023

Judgment on : 15.06.2023

Krishna Rao, J.:

1. The petitioner has filed the present writ application challenging the order passed by the Assistant Commissioner of State Tax, Siliguri, dated November 16, 2021 wherein the registration of the petitioner is

cancelled and the order passed by the Senior Joint Commissioner of Sales Tax, Siliguri dated January 27, 2023 being the Appellate Authority who had rejected the appeal filed by the petitioner.

- 2.** The petitioner was registered under the West Bengal Value Added Tax Act, 2003 and as per provision of Section 139 of the Goods and Service Tax, 2017, the petitioner got registration being GST Identification Number 19AKPPD3727J1ZU on July 18, 2018.
- 3.** Uptil February, 2019, the petitioner had regularly filed GST. Due to financial constraints because of severe illness of the brother of the petitioner since very long time, the petitioner was unable to discharge the tax liability and was unable to file return in GSTR-3B and statement of supply in GSTR-1.
- 4.** On October 8, 2021, the respondent no.1 had issued show cause notice under Section 73 of the WBGST Act, 2017 directing the petitioner to clarify as to why tax was not paid for the period from April' 2020 to March' 2021. In the said notice, it was also clarified that if the petitioner will not submit his reply within 30 days from the date of service of the notice, the registration certificate of the petitioner shall be cancelled.
- 5.** On November 16, 2021, the respondent no.1 had again issued a show cause notice to the petitioner directing the petitioner to clarify as to

why the petitioner has not filed GSTR-3B for continuous period of six months that is with effect from March' 2019 onwards.

- 6.** In response to the notice, the petitioner had appeared before the respondent no.1 and had prayed for time to file due return along with new tax and also prayed for allowing the petitioner to pay the due tax in an instalment basis. Without considering the request of the petitioner, on November 26, 2021 confirmed the demand issued against the petitioner vide show cause notice dated 8th October, 2021 and subsequently issued a demand notice in Form GST-DRC-07 for a total demand of Rs.16,98,629.42/- including interest and penalty.
- 7.** On July 22, 2022, the respondent no. 1 had cancelled the registration of the petitioner with effect from March 1, 2018.
- 8.** On October 14, 2022, the respondent no.1 had issued a notice of recovery to the State Bank of India, Siliguri Branch and recovered an amount of Rs.16,98,630/- against the petitioner for a period from April 1, 2022 to March 31, 2021.
- 9.** The petitioner had preferred an appeal but on January 27, 2023, the respondent no. 2 has rejected the appeal on the ground that the petitioner has not preferred an appeal within the time prescribed under law and there is a delay of 15 days for preferring an appeal.
- 10.** The respondent no.1 by an order dated November 16, 2021 has cancelled the registration of the petitioner with effect from March 1,

2018. The impugned order is without any reason and only it is stated that no reply to show cause notice has been submitted, the effective date of cancellation of registration is March 1, 2018.

11. Similarly, the respondent no. 2 had rejected the appeal only on the ground that the petitioner failed to file appeal within stipulated period of three months and failed to file online appeal as per the provision of GST Act.
12. The petitioner has relied upon an unreported Judgment passed by the Appellate Court in ***MAT No. 741 of 2022 (Santanu Mondal -vs- The Superintendent, Central Goods and Service Tax, Asansol Division, Range-IV & Ors.)*** wherein the Appellate Court held that the assessing authority, being the Assistant Commissioner 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.
13. In the present case also the Assessing Authority, the respondent no. 1 without considering the grievance of the petitioner had cancelled the certificate only on the ground that the petitioner has not submitted reply to the show cause and the Appellate Authority has dismissed the

appeal of the petitioner on the ground that the appeal is barred by limitation and not filed through online process.

14. This Court finds that the judgment relied by the petitioner is squarely applicable in the present case.
15. In view of the facts and circumstances of the case, the order passed by the Appellate Authority dated January 27, 2023 as well as the order passed by the respondent no. 1 dated November 16, 2021 are set aside.
16. The respondent no.1, the Assistant Commissioner of State Tax, Silliguri Circle is directed to consider the case of the petitioner afresh by giving an opportunity to the petitioner to file reply to the show cause notice and also to afford an opportunity of personal hearing to the petitioner and to pass a reasoned and speaking order on merits in accordance with law within a period of six weeks from the date of communication of this order. The attachment notice issued by the respondent no. 1 to the State Bank of India dated October 14, 2022 is also set aside.
17. **WPA No. 559 of 2023** is thus **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)