IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
CIRCUIT BENCH AT JALPAIGURI

BEFORE:
The Hon'ble Mr. Justice Ravi Krishan Kapur

WPA/1507/2023

SHANKAR EKKA
Vs.
THE ASSISTANT COMMISSIONER OF STATE TAX, COOCH BEHAR CHARGE & ORS.

For the Petitioner	:	Mr. Siddhartha S. Sengupta, Advocate Mr. Sumit Ghosh, Advocate
For the State	:	Mr. Hirak Barman, Advocate Mr. Bikramaditya Ghosh, Advocate
Reserved on	:	20.09.2023
Judgment	:	18.11.2023

Ravi Krishan Kapur, J. :-

1. The petitioner assails an order passed by the Appellate Authority dated 12 May, 2023 affirming the orders dated 30 June, 2022 and 12 April 2022 passed by the Assistant Commissioner of Revenue, Cooch Behar (Adjudicating Authority) whereby the petitioner's application for revocation of cancellation of registration under section 30(1) of the West Bengal Goods and Services Tax Act, 2017 (WBGST) read with the

corresponding chapter and sections of the Central Goods and Services Tax Act, 2017 (CGST) has been rejected.

2. Briefly, the appellant had been served a show cause notice on 21 September, 2020 under Rule 22(1) of the WBGST Rules, 2017 as to why his registration should not be cancelled for the reason that he was found to be non-functioning at his principal place of business. Pursuant to the aforesaid notice, the registration in favour of the petitioner was cancelled on 1 October, 2020 with retrospective effect from 21 October, 2019.

3. In an earlier round of litigation between the parties, being WPA 618 of 2021, a Learned Single Judge had by an order dated 24 February 2021 refused to entertain the writ petition on the ground that the petitioner had not availed of the statutory remedy. Being aggrieved by the order dated 24 February, 2021, the petitioner filed an appeal being MAT 13 of 2022 wherein the Hon'ble Division Bench set aside the order dated 24 February, 2021 and quashed the order directing cancellation of registration and further directed the petitioner to file a reply to the show cause notice dated 21 September, 2020 and the respondent authorities were directed to consider the matter afresh.

4. Thereafter, by an order dated 12 April, 2022 the Adjudicating Authority passed a final order concluding that the petitioner had obtained registration by fraud, willful misstatement and suppression of facts and had issued fake invoices to avail of Input Tax Credit (ITC). In such circumstances, the registration in favour of the petitioner was cancelled. Subsequently, the petitioner filed an application for revocation of cancellation of registration under section 30(1) of the Act which was also rejected by an order dated 30 June 2022. Being aggrieved by the order dated 30 June 2022, the petitioner had filed a statutory appeal which culminated in the passing of the impugned order.

5. On behalf of the petitioner it is contended that, the impugned order is liable to be set aside on the ground that the respondent authorities without restoring the registration certificate issued to the petitioner in terms of the order dated 11 March, 2022 passed in MAT 13 of 2022 had proceeded to cancel the registration certificate of the petitioner by a further order dated 12 April, 2022. It is submitted by the petitioner that the finding that the petitioner had issued fake invoices to help unscrupulous assessees to avail inadmissible ITC without actually doing

any business is based on irrelevant and extraneous factors like narrow road at the residential home of the petitioner and the educational qualifications of the petitioner which could not have been taken into account. It is further alleged that there has been no detriment to the Revenue and there are no facts which suggest fraud or willful misstatement or suppression of facts. It is alleged that the respondent authorities in passing the impugned orders have proceeded in a preconceived manner. It is also alleged that the field visit reports conducted by the respondent authorities were conducted unilaterally and could not form the basis for cancellation of his registration. In any event, the revocation of the petitioner's certificate could not have been cancelled with retrospective effect. In support of their contentions, the petitioner relies on the decision in *Aditya Polymers vs. Commissioner of Delhi Goods and Services Tax [2023] 150 Taxmann.com 223 (Delhi).* In such circumstances, the petitioner prays for quashing and setting aside of the orders dated 12 May, 2022, 30 June, 2022 and 12 April, 2023 respectively passed both by the Adjudicating Authority and the Appellate Authority.

6. On behalf of the respondent authorities, it is submitted that each of the impugned orders are well reasoned. On a factual conspectus and after an elaborate enquiry the Appropriate Authority had found that the petitioner was not involved in any business transactions. No positive evidence has been brought on record to demonstrate that the petitioner was running a business establishment where transactions were being conducted regularly and consistently which could have possibly aggregated in having a turnover of approximately Rs.21 crores. Accordingly, in view of the physical inspection, the turnover and the oral evidence of the wife of the petitioner, the respondent authorities had justifiably concluded that the petitioner was not conducting any business. Thus, there are no grounds to interfere with any of the impugned orders.

7. Sections 29 and 32 of the Act are as follows:

> *29. (1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,— .*
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> > *(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or*
> > *(b) there is any change in the constitution of the business; or*

(c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.

29 (2): The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the Central Goods and Services Tax Act shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semifinished or

finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

32. (1) A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.

(2) No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

10. Rule 25 of the WBGST Rules also provides as follow:

Physical verification of business premises in certain cases. - Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after the grant of registration, he may get such verification done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.

11. On a plain reading of section 29 of the Act, it is evident that there is a apparent difference between section 29 (1) and section 29 (2) of the Act. Both the sections operate in different fields. The power to cancel

retrospectively is provided under section 29 (2) of the Act. The intention of the Legislature is that in certain circumstances, the authorities have the power to retrospectively cancel the registration of any person which has been obtained by fraud, willful misstatement or suppression of facts. Entries which have been obtained on the basis of fraudulent registration and to allow accumulation of tax credit in favour of third parties would defeat the object and purpose of the Act. Despite not being involved in genuine transactions, entities resort to paper transactions with the oblique purpose of obtaining ITC fraudulently which is ultimately passed on to other third entities and circumvent the provisions of the Act. In such circumstances, the Legislature had contemplated retrospective cancellation of registrations which have been obtained to fraudulently avail ITC not only by the taxpayer whose registration is sought to be cancelled but also other entities which wrongfully seek to avail ITC.

12. There has been no violation of the principles of natural justice in the proceedings conducted by the authorities. On the contrary, the petitioner had been granted adequate opportunity by the respondent

authorities. The impugned orders are well reasoned. A detailed physical enquiry had also been conducted by the authorities before passing of the impugned orders. The glaring discrepancies which were found by the authorities with regard to the business conducted by the appellant were neither normal nor in the usual course of business. No cogent evidence has been relied on by the petitioner to warrant any interference with the impugned orders. There has also been no contravention of any law nor any procedural impropriety which warrants any interference.

13. For the abovementioned reasons WPA 1507 of 2023 stands dismissed. However, there shall be no order as to costs.

(Ravi Krishan Kapur, J.)