November 16, 2023
Sl. No. 10
Court No.2
s.biswas

In the Calcutta High Court
Circuit Bench at Jalpaiguri
Appellate Side

WPA 2503 of 2023

FCIB Enforcement and Detective Agency Pvt. Ltd.
vs.
Assistant Commissioner of State Tax, Siliguri Charge

Mr. Sandip Choraria
Mr. Rajeev Parik
... for the petitioner
Mr. Hirak Barman
Mr. Momenur Rahman
... for the State

This writ petition arises out of an order dated July 12, 2022 passed by the Assistant Commissioner of State Tax, State GST, cancelling the GST registration of the petitioner. The petitioner was issued a show cause notice, to which the petitioner failed to reply. The effective date of cancellation was retrospective from August 1, 2021. According to the authority, the returns for six months had not been filed. The authority cancelled the registration in exercise of powers under Section 29 Sub-Section 2 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the said Act), read with Rule 22 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said Rules).

The learned counsel for the petitioner submits that the company was facing proceedings before the learned NCLT and thereafter the Hon'ble High Court. As a result of which, the returns could not be furnished. The directorship of the company was in question.

During such proceedings, the bank account was also frozen and the Commissioner, GST Division, Matigara, Siliguri was informed about the same.

Although no reply to the show cause notice was filed before the authority concerned, the petitioner had repeatedly intimated the authority about the pending litigation and the reason for not filing the returns. Further submission is that the order impugned is unreasoned and cryptic.

A prayer is made relying on a decision of a learned Co-ordinate Bench passed in WPA 4682 of 2023, that the authorities be directed to restore the registration and allow the petitioner to pay up the amount due.

The learned counsel for the State who is opposing this writ petition, relies on the provisions of law and submits that the petitioner has approached this court belatedly.

According to the learned counsel, the reply to the show cause notice should have been furnished within seven days. Application for revocation of the order of cancellation of the registration, should have been filed within 30 days from the date of service of the order of cancellation of the registration.

Further reliance has been placed on the first proviso to Rule 23 of the said Rules in support of the contention that no application for revocation shall be filed if the registration has been cancelled for the failure to furnish the returns, unless such returns are furnished and the amount due is paid in terms of such returns along with any amount payable towards interest, penalty and late fee etc.

In this case, as the petitioner failed to furnish returns for six months, the authority had no other option but to cancel the registration.

It is further submitted that as the returns had not been filed, the calculation of the amount due and payable could not be done.

The law casts a duty upon the petitioner to file returns under Section 39 of the said Act. Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward or outward supplies of goods or service or both.

The law provides that failure to furnish returns will result in cancellation of registration under Section 29(2)(c).

Section 30 of the Act allows revocation of the order of cancellation of registration, subject to the condition that the returns are filed and all payments are made along with interest and penalty, if any. However, the time limit prescribed for filing an application for revocation of registration is 30 days from the date of service of the cancellation order.

A fiscal statute has to be construed strictly. The law specifically provides that the application for revocation of the order of cancellation of registration has to be filed within 30 days from the date of receipt of the cancellation order and cannot be extended beyond a further period of 30 days. Thus, in my view, no mandatory order can be passed directing the authority to restore the GST registration of the petitioner as such order will be in contradiction to the provisions of Section 30 and the proviso to the said section.

Secondly, it appears that Section 107 provides that the order impugned can be appealed from. There is also a period of limitation under the said provision, whereby, the appeal has to be filed within three months from the date of service of the order impugned and such period cannot be extended beyond another month.

The law does not empower the authorities to extend the period of limitation in filing the application for revocation or for filing of appeal beyond the period prescribed in the statute itself, i.e., further 30 days or one month, as the case may be.

Under such circumstances, this court is of view that it would not be proper to pass a mandatory order of restoration of the GST registration. The order of the learned Co-ordinate Bench, relied upon by the petitioner, is not clear on the facts and as such it is not possible for the court to understand whether in the said case, there had been any delay in approaching the High Court.

It is also a submission from the respondents that the authorities had given opportunities to such persons who had failed to file returns within the specified period by further extending such period up to September, 2023.

The petitioner has not availed of such opportunity.

The records do not reveal that the exact period during which the bank accounts were frozen. Whether steps could be taken by the company to furnish the returns during such period is a matter of record, which are not before this court.

Moreover, the nature of dispute which was pending before the NCLT and whether the said dispute would actually prevent the company from operating, is not available before the court. Unless these factual aspects are gone into and ascertained by the authorities, it would not be possible for this court to pass mandatory orders.

Under such circumstances, the writ petition is disposed of, with direction upon the petitioner to file a comprehensive representation to the Joint Commissioner, State Tax, Siliguri Charge, within two weeks from date, indicating the reasons as to why the returns could not be filed with documentary evidence to justify that the situation led to non-filing of returns. The authority shall consider the said representation, upon hearing the petitioner and pass necessary orders upon consideration of the provisions of law in question and the contentions of the petitioner.

If it is found that the case of the petitioner was genuine and the pending litigation and orders passed therein had prevented the petitioner from taking steps, necessary orders in this regard shall be passed by allowing the petitioner to file returns and calculating the amount payable. If the petitioner pays up all the dues along with interest and penalty from the date of cancellation till the date of the order, the GST registration shall be restored. In case of failure to comply with the order, shall debar the petitioner from seeking any GST registration. The technical support etc. required for such payment shall be made available to the petitioner.

The entire exercise shall be completed within a period of four weeks from the date of receipt of the petitioner's representation.

The writ petition is thus disposed of. There shall be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)