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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 8122 of 2024
With
CAN 1 of 2024

M/s. Lohum Cleantech Private Limited & Anr.
Versus
The Assistant Commissioner of Revenue,
Commercial Taxes, State Tax, Saltlake Charge & Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Jitesh Sah
... For the petitioners.

Mr. Anirban Ray, Ld. GP,
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
... For the State.

1. Challenging the order passed under Section 107 of the Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act"), the present writ petition has been filed.

2. Although, the said Act provides for an appellate forum, however since the Appellate Tribunal under Section 112 of the said Act is yet to be constituted, the present writ petition had been entertained.

3. The matter pertains to a challenge to an order dated 10th August, 2023, cancelling registration of the petitioner no.1 under the said Act.

4. Prior to issuance of the order of cancellation, the proper officer had issued a show cause dated 6th July, 2023. To morefully appreciate the grounds based on which the said cancellation was proposed, the same is extracted hereinbelow:-

> 1. *Section 29(2)(e) registration obtained by means of fraud willful misstatement or suppression of facts*
>
> 2. *Rule 21(a) person does not conduct any business from declared place of business*
>
> 3. *Rule 21(b) person issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder".*

5. As would appear from the above, one of the primary grounds based on which the cancellation was proposed was that the petitioner no.1 does not conduct any business from the declared place of business. Although, the petitioners had responded to the show cause, the proper officer had refused to accept the petitioners' contention and had ordered cancellation of the petitioners registration. Before the appellate authority the petitioners also could not succeed.

6. When the instant writ petition came up for consideration, a coordinate Bench of this Court by an order dated 5th April, 2024 taking note of the peculiar

facts of the case was, inter alia, pleased to permit the parties to hold a joint inspection. Since then, a joint inspection was held at the petitioner no.1's place of business on 22nd April, 2024. The said joint inspection has documented in the form of a report prepared by the State Tax Officer, the relevant portion thereof reads as follows:-

> **"***From the above mentioned observation and events during verification, it appeared that the entity is very much existent and carrying out business from the said place of business.***"**

7. Mr. Kanodia, learned advocate representing the petitioners by placing before this Court the aforesaid report which forms part of the application being CAN 1 of 2024, submits that in the light of the aforesaid report the very basis of passing the order of cancellation of the petitioners' registration under the said Act stands removed. As such, he prays for restoration of the petitioners' registration under the said Act by not only setting aside the order of cancellation dated 10th August, 2023 but also the appellate order dated 23rd February, 2024, appearing at page 97 of the writ petition.

8. Mr. Siddiqui, learned advocate representing the respondents submits that since a joint inspection had been held and the respondents are otherwise satisfied as regards existence of the petitioner no.1, necessary

direction may be issued by this Court. He, however, submits that appropriate time limit may be provided to the respondents for the purpose of restoring the petitioners' registration.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. It is apparent from the show cause notice dated 6th July, 2023 that the primary ground for cancellation of the petitioners' registration was that the petitioner no.1 does not conduct any business from the declared place of business. Admittedly, in term of the liberty afforded by a coordinate Bench of this Court on 5th April, 2024, the parties have carried out a joint inspection. A report to that effect has also been prepared by the State Tax Officer on 22nd April, 2024 which has been brought on record by the application being CAN 1 of 2024. As noted above, the said report clearly indicates that the respondents are satisfied as regards not only the existence of the petitioners but the factum of the petitioner no.1 carrying out business from the declared place of business.

10. Having regard to the aforesaid, and also taking note of the judgment delivered by the Hon'ble Division Bench of this Court in the case of ***Subhankar Golder v. Assistant Commissioner of State Tax, Serampore Charge***, (**MAT 639 of 2024**) on 9th April, 2024, I propose

to and do hereby set aside the order dated 10th August, 2023 cancelling the petitioner no.1's registration subject to the conditions that the petitioners files returns for the entire period of default, pays requisite amount of tax, interest, fine and penalty. As a sequel thereto, the order passed by the appellate authority under Section 107 of the said Act dated 23rd February, 2024 shall also set aside.

11. It is made clear that if the petitioners comply with the direction/conditions noted above within a period of 8 weeks from date of receipt of a server copy of this order, the petitioner no.1's registration under the said Act shall be restored by the jurisdictional officer. However, if the petitioners fail to comply with the directions as aforesaid, the benefit of this order will not enure to the petitioners and the writ petition would stand automatically dismissed.

12. For the purpose of compliance of the above directions, the jurisdictional officer is directed to open the portal within a period of four weeks from date for the petitioners to file their returns, pay requisite amount of tax, interest, fine and penalty.

13. With the above observations and directions the writ petition along with the connected application, being CAN 1 of 2024 stands disposed of.

14. All parties to act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J.)