14.05.2024
Item No.
ML-39
Court No.5
Saswata

W.P.A. 10191 of 2024

Subhashis Mojumder
Versus
The State of West Bengal & Ors.

Mr. D. Basu Thakur
...For the petitioner

Mr. Bhaskar Prosad Banerjee
Mr. Tapan Bhanja
...For the CGST Authorities

1. Mr. Thakur, learned advocate appearing for the petitioner at the very outset submits that the prayer challenging the order of cancellation of the registration of the petitioner effected on 27th May 2020 though, has not been incorporated, yet the writ petitioner by way of the appeal under Section 107(1) of the GST Act, 2017 (hereinafter referred to as the "said Act") having challenged the self-same order, this Court in exercise of its jurisdiction is competent to do complete justice. As such the petition be treated as a challenge to the order of cancellation of registration effected on 27th May, 2020.

2. It is the petitioner's case that a shows cause notice dated 16th March 2020 was issued calling upon the petitioner as to why the registration of the petitioner under the said Act, shall not be cancelled for the petitioner having failed to file its returns for a continuous period of 6 months. Although, the petitioner had responded to the same, by an order dated 27th May 2020 the proper officer had been pleased to cancel the petitioner's registration.

3. Mr. Thakur submits that the petitioner was and is all along interested to comply with the provisions of the said Act by filing his return. Unfortunately, such fact has been grossed over by the proper officer. He submits that although, an appeal was filed before the appellate authority under Section 107 of the said Act, such appeal has been dismissed by an order dated 5th February 2024, inter alia, on the ground that the same is time barred.

4. By placing reliance on a judgment of the Hon'ble Division Bench of this Court delivered in the case of ***Subhakar Golder v. Assistant Commissioner of State Tax, Serampore Charge (MAT 639 of 2024)*** on 9th April 2024, it is submitted that in similar circumstances, similar order of cancellation of registration has been set aside, subject to the condition that the petitioner files returns for the entire period of default, pays requisite amount of tax, interest, fine and penalty. He submits that this Court may be pleased to set aside the order of cancellation and allow the petitioner to file his returns.

5. Mr. Banjerjee, learned advocate appearing for the State on the other hand submits that the petitioner had not complied with the statutory provisions and it is for such reason, the registration of the petitioner under the said Act was cancelled.

6. According to the respondent authorities, the petitioner was given an opportunity to the show cause. Unfortunately, since the reply to the show

cause was unsatisfactory, the registration was cancelled. There is no irregularity on the part of the authorities in cancelling the registration of the petitioner.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record.

8. Admittedly, I find that the registration of the petitioner had been cancelled on the ground of non-filing of returns. It is not the case of the respondents that the petitioner had been adopting dubious process to evade tax. Although, the appeal has been preferred the same has, however, been dismissed on the ground of limitation. Taking note of the fact that the suspension/revocation of license would be counterproductive and works against the interest of the revenue since, the petitioner in such a case would not be able to carry on his business in the sense that no invoice can be raised by the petitioner and ultimately would impact recovery of tax, I am of the view that the respondents should take a pragmatic view in the matter and permit the petitioner to carry on his business.

9. I find from the submissions made by the respondents that unless, the petitioner files his returns, the respondents cannot determine the final tax liability.

10. Having regard to the aforesaid and taking note of the direction issued by the Hon'ble Division Bench of this Court in the case of ***Subhankar Golder*** (supra), I propose to set aside the order 27^{th} May 2020 cancelling the registration of the petitioner subject to the condition that the petitioner files his returns for the entire period of default and pays requisite amount of tax, interest, fine and penalty.

11. It is made clear that if the petitioner complies with the directions / conditions noted above within 4 weeks from the date of receipt of the server copy of this order, the petitioner's registration under the said Act shall be restored by the Jurisdictional Officer and as a sequel thereto the order dated 27^{th} May, 2020 cancelling the petitioner's registration and the order dated 5^{th} February 2024 passed by the appellate authority under Section 107 of the said Act shall stand set aside. However, if the petitioner fails to comply with the directions as aforesaid, the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed.

12. For the purpose of compliance of the above directions, the respondents are directed to open the portal within one week from date, so that the petitioner can file his returns, pays requisite amount of tax and interest and fine and penalty.

13. With the above direction and observations, the writ application being WPA 10191 of 2024 is disposed of without any order as to costs.
14. All parties to act on the basis of the server copy of this order duly downloaded from this Hon'ble Court's official website.

(*Raja Basu Chowdhury, J.*)