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

WPA 10822 of 2024

Rahul Mukherjee
versus
The State of West Bengal & Ors.

Mr. Siddhartha Das Gupta
Mr. Souvik Guha
Mr. Rahul Mukherjee
...For the petitioner
Mr. Anirban Ray
Mr. T. M. Siddiqui
Ms. Sumita Shaw
...For the State

1. The present writ petition has been filed, inter alia, challenging the order of cancellation of registration of the petitioner under the WBGST Act, 2017 (hereinafter referred to as the "said Act").
2. It is the petitioner's case that on or about 23rd August, 2022 the petitioner was served with a notice of show cause as to why the registration of the petitioner under the said Act shall not be cancelled for the petitioner having failed to file his returns for a continuous period of six months.
3. Mr. Das Gupta, learned advocate appearing for the petitioner submits that the petitioner was and is all along interested to comply with the provisions of the said Act by filing his returns. Unfortunately, such fact could not be brought to the notice of the respondents, as no reply to the show cause was

filed. He submits that the petitioner is ready and willing to comply with the provisions of the said Act.

4. By placing reliance on an unreported judgment of the Hon'ble Division Bench of this Court delivered in the case of ***Subhakar Golder versus 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 and interest and 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. Siddiqui, 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 the respondent authorities the petitioner was given opportunity to show cause. Since, no reply to the show cause was given by the petitioner, the authorities had cancelled the registration. There is no irregularity on the part of the authorities in cancelling the registration.

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. 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 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 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 dated 23rd August, 2022 cancelling the registration of the petitioner as also the appellate order dated 28th November, 2023, whereby the appellate authority

without considering the petitioner's appeal under Section 107 of the said Act on merits, had rejected the same on the ground of limitation, 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 the orders dated 23rd August, 2022 and 28th November, 2023 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, interest, fine and penalty.

13. With the above direction and observations, the writ petition is disposed of without any order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)