13.05.2024
Item No.
ML-66
Court No.5
Saswata

W.P.A. 11060 of 2024

Ashoke Mukherjee
-vs-
The Commissioner, WBGST & Ors.

Ms. Amrita Pandey
Ms. Sneha Singh
Ms. Bipasha Jaiswal
...For the petitioners

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

1. The present writ application 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"), effected vide order dated 28th September, 2022.

2. It is the petitioner's case that originally a show cause notice for cancellation of registration of the certificate issued under the said Act was issued on 23rd August 2022. According to the petitioner by reasons of oversight, the petitioner could not file his response to the show cause which ultimately resulted in the order dated 28th September, 2022 being issued.

3. Ms. Pandey learned advocate appearing for the petitioner by drawing attention of this Court to page 30 of the writ petition submits that the petitioner, immediately upon coming to learn with regard to cancellation of the registration, had filed an application, inter alia, praying for revocation of the order of cancellation. In pursuance to the aforesaid, a show cause notice dated 12th October 2022

was issued. Although, the petitioner had duly responded to the same, the proper officer by a cryptic order dated 18th November 2022, without considering the petitioner's response and by observing that the reply given by the petitioner has been found to be unsatisfactory, had rejected the same. The reasons for rejection are reproduced hereinbelow:-

> *"This has been reference to your reply filed vide ARN AA190922042032I dated 28/09/2022. The reply has been examined and the same has not been found to be satisfactory for the following reasons:*
> *1. Reason for revocation of cancellation – Others (Please specify) – Pl submit total purchase and sale statement from the date of cancellation till date and pay all your liabilities. You are requested also to submit a manual copy of the same to our office.*
> *2. You have not uploaded/submitted the documents as per requirement. So your application is rejected."*

4. Ms. Pandey, submits that from the aforesaid communication dated 18th November 2022, including the order of cancellation of the petitioner's registration dated 28th September 2022, it would appear that no liability has been thrust on the petitioner. By drawing attention of this Court to a judgment delivered by the Division Bench of this Court in MAT 1376 of 2022 with IA No. CAN 1 of 2022 on 1st September 2022 in the case of ***Bisweswar Midhya, Proprietor of Midhya Construction vs. The Superintendent, CGST & CX Range V, Haldia II Division, Haldia CGST & CX Commissionerate & ors.,*** it is submitted that the object of the GST Act would be

defeated if the petitioner's registration is not permitted to be revived. In such event, the petitioner shall not be in a position to carry on its business and the same would be counter- productive to the interest of the revenue.

5. It is submitted that the respondents should not treat the petitioner as a person hostile to the department. It is not the case of the respondents that the petitioner adopted dubious process to evade payment of tax. From the order of cancellation it would not appear that the petitioner had evaded any tax. Having regard to the aforesaid it is submitted that the cancellation of the petitioner's registration should be revoked as the petitioner is ready and willing to comply with the provisions of the GST Act. The petitioner is also ready and willing to pay any tax liability that may be imposed by the respondents.
6. Mr. Sanyal, learned advocate appearing for the State, however, does not dispute the fact that in none of the aforesaid orders any liability has been thrust on the petitioner.
7. Insofar as the question of evasion of tax is concerned, it is submitted that unless, the petitioner files its returns, it is difficult for the respondents to determine the final tax liability.
8. Heard the learned advocates appearing for the respective parties and considered the materials on record.
9. Although, the cancellation order of the petitioner's registration dated 28th September, 2022 records that the petitioner had submitted a response, I find from the pleadings that no response had, in fact, been filed by the

petitioner. On the contrary, the petitioner had also responded to the show cause dated 12th October 2022 issued in connection with his application for rejection of the order of cancellation. The said response to the show cause, however, does not appear to have been considered at all by the proper officer. The reason for rejection of the application for revocation of cancellation of registration vide order dated 18th November, 2022 is non submission of total purchase and sale statement from the date of cancellation till the date of response. Although, the petitioner appears to have preferred an appeal from the aforesaid order by invoking the provisions of Section 107 of the said Act, the appellate authority has purported to reject the said appeal by its order dated 12th February 2024, inter alia, on the ground that the appellate authority is incompetent to admit any appeal beyond one month from the prescribed period as provided for under Section 107(4) of the said Act. Although, the said order has not been challenged in the aforesaid writ petition, however, since this Court, while in Circuit Bench at Jalpaiguri, in the case of ***Sujit Das versus The Senior Joint Commissioner of Revenue, State Tax, Jalpaiguri Circle & Ors.***, in ***WPA 884 of 2024*** on 24th April 2024, by placing reliance in the case of ***S.K.Chakraborty & Sons versus Union of India*** reported in **(2024) 123 GSTR 229** was, inter alia, pleased to observe that the appellate authority is competent to condone the delay one month beyond the prescribed period under Section 107 of the said Act, I am of the view that the aforesaid appellate order cannot interfere with the petitioner's substantive rights for reconsideration of his case as regards restoration of registration under the said Act.

10. Be that as it may, taking into consideration the fact that suspension/revocation of registration would be counter productive and works against the interest of the revenue, since the petitioner in such a case would not be able to carry on its 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.

11. The reasons for not revoking the cancellation has been clearly spelt out in the order dated 18th November 2022. It appears that the petitioner having not uploaded/submitted the total purchase and sale statements from the date of cancellation, his application had been rejected. Having regard to the aforesaid, I am of the view that the cancellation of petitioner's registration should be revoked with a further direction on the petitioner to forthwith file his returns along with documents as per requirement for the respondents to determine the tax liability. Once, the returns are filed, the respondents shall determine the liability, if at all.

12. Having regard to the aforesaid, I propose to set aside the order dated 12th February 2024 passed by the appellate authority, order of cancellation of registration dated 28th September 2022 and the order of rejection dated 18th November 2022, subject to the condition that the petitioner

complies with the directions issued by the respondents and file his returns for the entire period of default and pays requisite amount of tax, interest, fine and penalty.

13. 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 proper officer and the orders dated 28th September, 2022, 18th November, 2022 and the order dated 12th February, 2024 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.

14. 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.

15. With the above directions and observations, the writ petition being WPA 11060 of 2024 is disposed of without any order as to costs.

16. Since, I have not called for any affidavits, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

17. All parties to act on the basis of the server copies of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)