Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

W.P.A 11277 of 2024

Limton Metals Limited & Anr.
Versus
The Superintendent, Lalbazar Range III & Ors.

For the petitioners	:	Ms. Rita Mukherjee Mr. Abhijit Das
For the respondents	:	Mr. Shiv Shankar Banerjee Mr. Abhradip Maity
Heard on	:	25th June, 2024
Judgment on	**:**	**25th June, 2024**

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the show cause notice dated 19th January, 2024, for cancellation of the petitioner no.1's registration under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act") as also the order dated 31st January, 2024 cancelling the petitioner no.1's registration under the said Act.

2. Ms. Mukherjee, learned advocate representing the petitioners by placing reliance on the aforesaid show cause notice submits that the same has not been issued in consonance with the provisions of Section 29 of the said Act. It is submitted that the show-cause notice does not disclose reasons as to why the petitioner no.1's registration under the said Act is liable to be cancelled. Under the column reasons, "others" have been mentioned. According to the petitioners, the word "others" has not been specified as a ground for cancellation of registration under the said Act. It is submitted that the petitioner no.1 is a registered company and has been regularly filing returns with the Ministry of Corporate Affairs and such fact would corroborate from a copy of the print out from the Ministry of Corporate Affairs which is annexed at page 34 of the writ petition. According to the petitioners, despite the fact that the petitioner no.1 had responded to the aforesaid show cause notice, the respondents have purported to cancel the said registration of the petitioner no.1 by passing the order dated 31st January, 2024, which was served on the petitioner no.1 only on 1st February, 2024. In the facts as stated above, it is submitted that the order of cancellation cannot be sustained.
3. Mr. Banerjee, learned advocate representing the respondents submits that in the instant case, the petitioner no.1 was duly notified the circumstances as to why the aforesaid show cause

notice had been issued. By referring to the said show cause, it is submitted that the show cause includes supporting documents. From the documents appearing at pages 37 and 38 of the writ petition it would transpire that on the basis of an investigation carried on, since, it *prima facie* appeared that the petitioner no.1 is a fake entity which was created only to pass on irregular ITC to the recipient of invoices without underlying supply of goods or service or both, appropriate action under Section 29 of the said Act was initiated. He submits that in course of inspection, location of the petitioner no.1's place of business could not be identified. Such fact, according to the respondents would corroborate from the Panchnama and the report of the postal department which is placed before this Court, a copy whereof is taken on record.

4. In the circumstances as aforesaid, it is submitted that there is no irregularity on the part of the respondents in passing the aforesaid order. It is still further submitted that the aforesaid proceeding was initiated by invoking the powers conferred on the proper officer by virtue of Section 29(2)(e) of the said Act. As such no interference is called for.

5. Heard the learned advocates appearing for the respective parties and considered the materials on record. Although, a lot of argument has been advanced by the learned advocate representing the petitioners that the show cause notice did not

identify and/or specify the reasons it would, however, transpire from the show cause, that it referred to certain supportive documents which were also made over to the petitioner no.1 along with the aforesaid show cause notice. From the document appearing at page 37 of the writ petition, being a communication issued by the Assistant Commissioner, it would transpire that a *prima facie* opinion had been formed that the petitioner no.1 was a fake entity and was created only to pass on irregular ITC to the recipient of invoices without underlying supply of goods or services or both. This aforesaid information was thus, passed on the petitioners before taking the final decision and by affording opportunity to the petitioner no.1 to explain.

6. Having regard to the aforesaid, it cannot be said that the petitioner no.1 was not disclosed the reasons as to why the show cause had been issued. However mere disclosure of reasons, in my view, does not satisfy the requirement of the provisions contained in Rule 25 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "said Rules"). A perusal of the aforesaid Rule would demonstrate the mode and manner in which the physical verification of the business premises in certain cases are required to be carried out. Admittedly, in this case, the petitioners were not notified of the attempt made by the respondents to identify the

petitioner no.1's place of business. Although, Mr. Banerjee, by placing reliance on the endorsement made by the postal authorities on a letter dated 17th January, 2024 attempts to establish that the petitioner no.1 is not in existence, I am of the view that such a procedure to establish the existence or non-existence of a company is unknown in law. Be that as it may, taking into consideration the fact that on physical verification the existence of the petitioner no.1's business location could not be located by the respondents and since, the petitioners complain of procedural irregularity in connection with the physical verification of the petitioner no.1's business premises, this Court to test out the bona fide of the petitioners, had sought for the views of the petitioners whether the petitioners are ready and willing to cooperate for a further inspection to be conducted by the respondents in accordance with the Rule 25 of the said Rules. Unfortunately, the petitioners' advocate insists that unless the order as aforesaid is set aside, the petitioners are not ready and willing to permit the respondents to inspect the petitioner no.1's business premises.

7. Having regard to the aforesaid, and the reluctance of the petitioners to corporate for a further inspection raises serious doubts as regards bona fide of the petitioners. Although, the procedure adopted by the respondents to cancel the petitioner

no.1's registration under the said Act may not be strictly as per the procedure laid down, however, the same cannot be said to be *per se* illegal or without any basis, especially when the petitioners are not interested to have the factual determination as regards the existence of the petitioner no.1's business premises made by the respondents, tested out by a further inspection. The above raises a presumption that the petitioners are withholding information and have not approached this Court with clean hands. In the facts noted above, I am of the view that the petitioners are not entitled to any relief under Article 226 of the Constitution of India.

8. The writ petition stands dismissed.

9. There shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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