Form No.J(2)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 13360 of 2024

Prasanta Das
Versus
The Superintendent, Range-V CGST & CX,
Barrackpore Division, Kolkata North Commissionerate & Ors.

For the petitioner	:	Ms. Sutapa Roychoudhury Mr. Abhijat Das Ms. Aratrika roy
For the CGST Authority	:	Mr. U. S. Bhattacharya Ms. Aishwarya Rajyashree
Heard on	:	13.06.2024
Judgment on	:	**13.06.2024**

Raja Basu Chowdhury, J:

1. Affidavit of service filed in Court today is taken on record.

2. The present writ petition has been filed, inter alia, challenging the order of cancellation of registration of the petitioner dated 27th March, 2023, passed under the Central/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act").

3. The petitioner is registered under the provisions of the said Act. The petitioner claims to be a small businessman and a works

contractor. According to the petitioner during the Covid period there had been certain defaults in filing of returns. It is in connection therewith, the petitioner was served with a show cause notice dated 14th January, 2023, calling upon the petitioner to show cause as to why the registration of the petitioner under the said Act shall not be cancelled on account of failure on the part of the petitioner to furnish returns under Section 39 of the said Act, for a continuous period of six months.

4. Ms. Roychoudhury, learned advocate representing the petitioner by drawing attention of this Court to the first proviso to Rule 22 of the Central/West Bengal Goods and Services Rules, 2017 (hereinafter referred to the said Rules) submits that once, the show cause as regards the cancellation of registration is issued alleging contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of Section 29 of the said Act, it is open to the Registered Tax Payer (RTP) without filing its response to the show cause to furnish all pending returns and make payment of all taxes dues along with applicable interest and late fee and once, such compliance is made it is the obligation of the proper officer to drop the proceedings and pass an order in Form GST/REG-20 without insisting for response from the RTP.

5. By drawing attention of this Court to the print out of the track return status taken from the portal of the respondents, she submits

that the petitioner had after receipt of the show cause duly filed the returns for the period from 1st April, 2022 to 31st March, 2023 on 16th March, 2023 and once, such returns were filed, it was the obligation of the proper office to take a note of the same. However, in the instant case, the proper officer without appropriately taking note of such returns had proceeded to pass an order of cancellation of registration of the petitioner on 27th March, 2023 on account of the purported failure of the petitioner to furnish returns for a continuous period of six months.

6. Following the aforesaid, the petitioner had promptly on 20th April, 2023 filed an application for revocation of cancellation of registration. Unfortunately, for the petitioner the said application for revocation of cancellation was rejected since the petitioner did not respond to a further show cause issued by the respondents on 26th April, 2023.

7. Being aggrieved, the petitioner had filed an appeal under Section 107 of the said Act and had in the interregnum on 22nd April, 2024 filed returns for the subsequent period.

8. Incidentally, the appeal was dismissed by the appellate authority, *inter alia*, on the ground that the same was barred by limitation as the same was filed beyond the time prescribed as provided for in Section 107 of the said Act.

9. Interestingly, however, the appellate authority, despite the aforesaid, had gone into the merits of the case and had upheld the order of cancellation.

10. In the facts as noted above, it is submitted that the petitioner who is only a small businessman and is a works contractor should be afforded with a further opportunity to carry out his business.

11. Ms. Roychoudhury, submits that the petitioner is ready and willing to comply with the provisions of the said Act by making payment of all taxes as may be found due.

12. Mr. Bhattacharya, learned advocate representing the respondents on the other hand submits that the petitioner was never interested to comply with the provisions of this Act, despite being afforded with repeated opportunities. The petitioner did not appear before the authorities. None of the documents disclosed in the petition was brought to the notice of the proper officer, for the proper officer to take a decision in that regard. Even while the petitioner filed the appeal belatedly and the same was barred by limitation, no attempt was made by the petitioner to file an application seeking condonation of delay. In the given facts, the conduct of the petitioner does not appear to be *bona fide* and no relief should be afforded to the petitioner.

13. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, I find

that the petitioner's registration under the said Act had been cancelled on the ground of non-filing of returns. It is not the case of the respondents that the petitioner had been adapting 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.

14. I find it is the contention of the respondents that the petitioner is not interested to comply with the provisions of the said Act, it is, however, noticed that immediately upon issuance of the show cause the petitioner had filed its returns. Such fact would corroborate from the print out taken from the portal of the respondents.

15. Although, it has been strenuously argued by Ms. Roychoudhury, that it was the obligation of the proper officer to take note of the returns filed by the petitioner, the fact that the petitioner remained unrepresented during the hearing cannot be ignored.

16. Be that as it may, for reasons noted hereinabove and having regard to the direction issued by the Hon'ble Division Bench of this Court in the case of ***Subhankar Golder v. Assistant***

Commissioner of State Tax, Serampore Charge & Ors. (**MAT 639 of 2024**) on 9th April, 2024, I propose to set aside the order dated 27th March, 2023, cancelling the registration of the petitioner under the said Act, 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, if not already paid.

17. 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/respondent no.1. 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.

18. For the purpose of compliance of the above directions, the respondents are directed to activate the portal within one week from the date of communication of this order, so that the petitioner can file his returns, pays requisite amount of tax, interest, fine and penalty if not already paid.

19. As a sequel to the above, the order dated 11th May, 2023, rejecting the application for revocation of the order of cancellation and the order dated 26th February, 2024 passed by the appellate authority also stand set aside.

20. Since, no affidavit-in-opposition has been called for, the allegation made in the writ petition are deemed not to have been admitted by the respondents.

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

22. 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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