Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 13559 of 2024

Kanaklal Sutradhar
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Himangshu Kumar Roy Mr. Paban Kumar Ray Mr. Subhasis Podder Ms. Shiwani Shaw Mr. Amit Saha
For the respondents	:	Mr. Anirban Ray, Ld. GP, Mr. T. M. Siddiqui Mr. T. Chakraborty Mr. Saptak Sanyal
Heard on	:	3rd July, 2024
Judgment on	:	**3rd July, 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 show-cause notice dated 27th July, 2022, as also the order of cancellation of registration of the petitioner dated 23rd August, 2022, passed by the appellate authority under the Central Goods

and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act").

3. It is the petitioner's case that at all material point of time the petitioner was a registered tax payer and was engaged in business of selling medicines. Incidentally, on 31st January, 2022, the petitioner was apprehended by the police authorities in connection with Chakulia Police Station Case No. 260 of 2021 dated 2nd September, 2021 under Section 21(C) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. Since then, the petitioner could not secure his release, as his prayer for bail was rejected up to the Hon'ble Supreme Court. Ultimately, after conclusion of the trial, by a judgment and order dated 20th July, 2023 passed by the Additional District and Sessions Judge, 1st Court, Raiganj, Uttar Dinajpur in NDPS Case No. 67 of 2021, the petitioner, was found not guilty of the offences punishable under Section 21(C) of the NDPS Act and was accordingly acquitted under Section 235(1) of the Code of Criminal Procedure with a further direction that the petitioner be released on furnishing a fresh bail bond of Rs.2000/- with one surety in terms of Section 437A of the Code of Criminal Procedure 1973.

4. Consequent thereon the petitioner could secure his release on 20th July, 2023. Subsequently the petitioner had filed an appeal under Section 107 of the said Act. The same was, however, rejected by an order dated 13th March, 2024 passed by the appellate authority

under Section 107 of the said Act, inter alia, on the ground that the petitioner having not filed any application for revocation of cancellation of his registration, the appellate authority has no option but to uphold the order passed by the proper officer and consequentially the appeal was rejected.

5. Being aggrieved, the present writ petition has been filed.
6. Mr. Roy, learned advocate representing the petitioner by drawing attention of this Court to the discharge certificate issued by the Superintendent, Raiganj District Correctional Home, submits that the petitioner was in jail custody in the Raiganj District Correctional Home for a period of one year seven months and seventeen days from 3rd February, 2022 till 20th July, 2023.
7. The petitioner was arrested on 30th January, 2022 and since then he could not secure bail, until the time mentioned hereinabove. For reasons aforesaid, the petitioner did not have any opportunity to apply for revocation of the order of cancellation of his registration. The petitioner was otherwise prevented from operating his business. This aspect was not taken into consideration by the appellate authority. The appellate authority had mechanically rejected the petitioner's appeal.
8. In the facts as noted above, he submits that the order passed by the appellate authority should be set aside and the registration of the petitioner be restored.

9. Mr. Siddiqui, learned advocate enters appearance on behalf of the respondents. He does not dispute the fact that the petitioner was in jail custody between 3rd February, 2022 till 20th July, 2023.

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

11. Admittedly, during the period between 3rd February, 2022 and 30th July, 2023 the petitioner was in jail custody. The show-cause was issued on 27th July, 2023 and order of cancellation of petitioner's registration was passed on 23rd August, 2022. The petitioner had no opportunity either, to respond to the show-cause or to prefer an application for revocation of the order of cancellation. From the certificate issued by the Superintendent, Raiganj District Correctional Home dated 27th July, 2023 it would appear that the petitioner had been released pursuant to his acquittal on 20th July, 2023. Thereafter, the petitioner had preferred an appeal. I find that the appellate authority under Section 107 of the said Act had purported to reject the said appeal on the ground that the petitioner did not apply for revocation of the cancellation of his registration. The aforesaid order, to that extent, appears to be mechanical, without application of mind.

12. I may note that it is not the case of the respondents' that the petitioner had evaded tax, rather the show-cause notice would show that the allegation was that the tax payer was not functioning. For

reasons noted above since the petitioner could not respond to the show-cause the order of cancellation was passed.

13. In this context, it would be relevant to note that the Division Bench of this Hon'ble Court in the case of ***Subhankar Golder v. Assistant Commissioner of State Tax, Serampore Charge (MAT 639 of 2024)*** on 9th April 2024, while considering the case of cancellation of registration was, *inter alia*, pleased to set aside the order of cancellation subject to the registered tax payer whose registration had been cancelled, files returns for the entire period of default, pays requisite amount of tax and interest, fine and penalty.

14. In the light of the above and having regard to the direction issued by the Hon'ble Division Bench in the case of ***Subhankar Golder*** (supra), I do hereby propose to and set aside the order dated 23rd August, 2022 cancelling the petitioner's registration and the order dated 13th March, 2024 passed by the appellate authority under the said Act, subject to the conditions that the petitioner files his returns for the entire period of default and pays requisite amount of tax and interest and fine, late fees and penalty, if not already paid.

15. 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. 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.

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

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

18. All parties to act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Raja Basu Chowdhury, J.)

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