5th September, 2024
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W.P.A 18423 of 2024

Samarendra Nath Roy
Vs.
Deputy Commissioner of Revenue, State Tax, Howrah and Kadamtala Charge and others

Mr. Prasenjit Burman
Ms. Payel Koley
Mr. Swapnesh Mallik
...for the petitioner.

Mr. Anirban Ray
Md. T.M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...for the State.

1. The instant writ petition has been filed, inter alia, challenging an appellate order dated 11th June, 2024 passed under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as 'the said Act').

2. Mr. Burman, learned Advocate appearing on behalf of the petitioner, by drawing attention of this Court to the order of cancellation of registration dated 11th July, 2023 would submit that the petitioner's registration under the said Act has been cancelled only on the ground of non-filing of returns.

3. He would submit that although the petitioner had complied with the direction as regards furnishing of returns under Section 39(1) of the said Act subsequently, after passing of the aforesaid order

and had paid the requisite tax, the above cancellation order had not been recalled. He submits that the petitioner had since applied before the Appellate Authority by filing an appeal.

4. Admittedly such appeal was filed belatedly beyond the prescribed period of limitation. However, despite the fact that the petitioner had all good intentions and is interested to make payment of tax, interest, penalty and fine as may be found due since, the appeal was dismissed on the ground of limitation such aspect could not be considered. He submits that the appellate tribunal is yet to be constituted and as such the instant writ petition has been filed. As such this Hon'ble Court in the given facts may be pleased to set aside the order passed by the Appellate Authority, inter alia, including the order of cancellation of registration on the undertaking given by the petitioner that the petitioner shall comply with the provisions of the said Act and shall pay tax, interest, fine and penalty as may be found due.

5. Mr. Sanyal, learned Advocate appearing on behalf of the respondents, would submit that since the petitioner did not comply with the provisions of the said Act and did not file the returns in time, after giving an opportunity to the petitioner to show cause, the

order of cancellation had been passed. There is no irregularity in such an order.

6. The appeal filed by the petitioner was hopelessly barred by limitation and as such the Appellate Authority has rightly rejected the appeal. As regards the claim made by the petitioner that the petitioner is interested to comply with the provisions of the said Act by making payment of tax, interest, penalty and fine as may be found due, he submits that it is not possible at this stage for the respondents to identify the exact liability. However, if the petitioner is interested to comply with the provisions of the said Act, respondents do not intend to stand in the way subject to the petitioner making payment of requisite tax, interest, penalty, fine and late fee as may be found due.

7. Heard the learned Advocates appearing on behalf of the respective parties and consider 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 be 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.

8. Although it has been argued by Mr. Sanyal that there is no irregularity on the part of the respondents in cancelling the registration and dismissing the appeal, however, the fact that the petitioner is now interested to comply with the provisions of the said Act, in my view, cannot be ignored.

9. Having regard to the direction issued by the Hon'ble Division Bench of this Court in the case of ***Subhankar Golder v. Assitant Commissioner of State Tax, Serampore Charge & Ors. (MAT 639 of 2024)*** on 9th April, 2024, I propose to set aside the order dated 11th July, 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.

10. It is made clear that if the petitioner complies with the directions/conditions noted above, within four 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.

11. 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.

12. As a sequel to the above, the order dated 11th July, 2023, cancelling the petitioner's registration under the said Act and the order dated 11th June, 2024 passed by the Appellate Authority stand set aside.

13. 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.

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

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

(Raja Basu Chowdhury, J.)