Item no.
AD 13
Ct. 5
27.08.2024
Saswata

WPA 19055 of 2024
Matiur Rahaman Chaudhury & Ors.
versus
The State of West Bengal & Ors.

Ms. Sweta Mukherjee
...For the petitioners
Mr. Anriban Ray, Ld. GP
Mr. Md. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...For the State

1. The present writ petition has been filed, inter alia, challenging the order of cancellation of registration of the petitioners under the CGST/WBGST Act, 2017 (hereinafter referred to as the "Said Act") dated 14th August 2023 as also the order dated 5th July 2024 passed by the appellate authority in an appeal arising out of the order of cancellation of registration under the said Act.

2. It is the petitioners' case that on 15th January 2023 the petitioners were served with a notice of show cause as to why the registration of the petitioners under the said Act shall not be cancelled for the petitioners having failed to furnish their returns for a continuous period of six months.

3. Ms. Mukherjee, learned advocate appearing for the petitioners submits that the petitioners were and are all along interested to comply with the provisions of the said Act by filing their returns. Unfortunately, such fact could not be appropriately brought to the notice of the respondents. She submits that the petitioners are ready and willing to comply with the provisions of the said Act and make payment of tax, interest, penalty and fine.

4. By placing reliance on a judgment of the Hon'ble Division Bench of this Court delivered in the case of ***Subhakar Golder versus Assistant Commissioner of State Tax, Serampore Charge (MAT 639 of 2024)*** on

9th April 2024, it is submitted that in similar circumstances, similar order of cancellation of registration had been set aside, subject to the condition that the petitioner in the said case file returns for the entire period of default, pays requisite amount of tax, interest, fine and penalty. She submits that this Court may be pleased to set aside the order of cancellation and allow the petitioners to file their returns.

5. Mr. Ray, learned Government Pleader on the other hand submits that the petitioners had not complied with the statutory provisions and it is for such reason, the registration of the petitioners under the said Act was cancelled.

6. According to the respondent authorities the petitioners were given opportunity to show cause. Since, no reply to the show cause was given by the petitioners, the authorities had cancelled the registration. There is no irregularity on the part of the authorities in cancelling the registration. In fact, the appeal was also filed belatedly by the petitioners which has also been dismissed by the Appellate Authority.

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

8. Admittedly, I find that the registration of the petitioners had been cancelled on the ground of non-filing of returns. It is not the case of the respondents that the petitioners had been adopting dubious process to evade tax. Taking note of the fact that the suspension/revocation of registration would be counterproductive and works against the interest of the revenue since, the petitioners in such a case would not be able to carry on their business in the sense that no invoice can be raised by the petitioners 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 petitioners to carry on their business.

9. Having regard to the aforesaid and taking note of the direction issued by the Hon'ble Division Bench of this Court in the case of

Subhankar Golder (supra), I propose to set aside the order dated 14th August, 2023 cancelling the registration of the petitioner subject to the condition that the petitioners file their returns for the entire period of default and pay requisite amount of tax and interest and fine and penalty. As a sequel thereto, the aforesaid order passed by the Appellate Authority on 5th July 2024 is also set aside.

10. It is made clear that if the petitioners comply 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 petitioners fail to comply with the directions as aforesaid, the benefit of this order will not enure to the petitioners 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 date, so that the petitioners can file their returns, pay requisite amount of tax, interest, fine and penalty.

12. With the above direction and observations, the writ application being WPA 19055 of 2024 is disposed of without any order as to costs.

13. All parties to act on the basis of the server copy of this order duly downloaded from this Hon'ble Court's official website.

(Raja Basu Chowdhury, J.)