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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20549 of 2024

Raj Developer and Infrastructure
Vs.
Union of India & Ors.

Mr. Promit Majumder
Ms. Uzma Ali
... For the petitioner.

Mr. Soumak Bera
Mr. Amal Kumar Dutta
... For Union of India

Ms. Manasi Mukherjee
Mr. Bijitesh Mukherjee
... For the respondent nos. 2 and 3

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

2. The present writ petition has been filed challenging the order of cancellation of registration of the petitioner under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act").

3. The petitioner also challenges the order dated 1st December, 2023, by which the application for revocation of cancellation was also rejected.

4. Records would reveal that the petitioner's registration under the said Act was cancelled by reasons of non-filing of returns under Section 39 of the said Act. The same was preceded by a show cause notice. The cancellation order was effected on 26th September,

2023 and the effective date of cancellation of registration was 26th February, 2023, i.e. prior to the date of issuing the notice proposing cancellation of registration.

5. Although the petitioner had filed a revocation application on 28th October, 2023, such application was rejected by an order dated 1st December, 2023.

6. Mr. Majumder, learned advocate appearing on behalf of the petitioner would submit that the petitioner was and is all along interested to comply with the provisions of said Act. Unfortunately, since the return could not be filed in time, the registration had been cancelled. According to the petitioner, the petitioner had kept aside the liabilities for payment of tax till September, 2023 in the cash ledger. It is still further submitted that up to February, 2023, the returns have duly been filed.

7. Mr. Majumder, further submits that in the event the registration of the petitioner under the said Act is restored by revoking the order of cancellation, the petitioner undertakes to comply with the provisions of the said Act and is ready and willing to make payment of tax, fine, interest and penalty and late fees as may be applicable.

8. Ms. Mukherjee, learned advocate appearing on behalf of the respondent nos. 2 and 3 would submit that

admittedly, in this case the petitioner was issued a show cause prior to cancellation of the petitioner's registration under the said Act. The petitioner did not respond to the show cause. Consequentially, the order of cancellation of registration of the petitioner was issued. The petitioner did not comply with the provisions of said Act and had not filed the final return in Form GST DRC-10 and, as such, no leniency should be shown to the petitioner.

9. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I find that in this case the petitioner did not comply with the provisions of the said Act for which the consequence in the form of cancellation of registration had followed. Although, the petitioner had subsequently filed an application for revocation, the same had also been rejected.

10. Admittedly, I find that the registration of the petitioner had been cancelled on the ground of non-filing of returns. It is not the case of the respondents that the petitioner 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 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.

11. I find from the submissions made by the respondents that unless, the petitioner files his returns, the respondents cannot determine the final liability

12. Having regard to the aforesaid, I propose to set aside the order dated 26th September, 2023 cancelling the registration of the petitioner subject to the condition that the petitioner files his returns for the entire period of default and pays requisite amount of tax, interest, fine, penalty and late fee as may be applicable.

13. 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.

14. 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, interest, fine,

penalty and late fee.

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

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

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.)