Item no.
ML 297
Ct. 5
01.10.2024
Saswata

WPA 21499 of 2024

Safatulla & Anr.
versus
Union of India & Ors.

Mr. Purnendu Sekhar Bhadra
...For the petitioners
Mr. Vipul Kundalia
Mr. Soumen Bhattacharjee
...For the Union of India
Mr. Anirban Ray, Ld. GP
Mr. Md. T.M.Siddiqui, Ld. AGP
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
...For the Union of India

1. Affidavit of service filed in Court today is retained with the record.

2. The present writ petition has been filed, inter alia, challenging the order of cancellation of registration of the petitioners under the WBGST Act, 2017[1].

3. It is the petitioners' case that on 27th December 2021 the petitioner no. 1 was served with a notice of show cause as to why the registration of the petitioner no. 1 under the said Act shall not be cancelled for the petitioner no.1 having failed to furnish his returns for a continuous period of six months.

4. Mr. Bhadra, 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 his returns. Unfortunately, such fact could not be brought to the notice of the respondents, as no reply to the show cause was filed. He submits that the petitioners are ready and willing to comply with the provisions of the said Act.

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[1] Hereinafter referred to as the "said Act"

5. 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 files returns for the entire period of default, pays requisite amount of tax and interest and fine and penalty. He submits that this Court may be pleased to set aside the order of cancellation and allow the petitioner no.1 to file his returns.

6. Mr. Siddqui, learned Additional Government Pleader on the other hand submits that the petitioner no. 1 had not complied with the statutory provisions and it is for such reason, the registration of the petitioner no.1 under the said Act was cancelled.

7. According to the respondent authorities the petitioner no. 1 was given opportunity to show cause. Since, no reply to the show cause was given by the petitioner no.1, the authorities had cancelled the registration. There is no irregularity on the part of the authorities in cancelling the registration. In fact, the appeal belatedly filed by the petitioners had also been dismissed by the Appellate Authority.

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

9. Admittedly, I find that the registration of the petitioner no. 1 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 license would be counterproductive and works against the interest of the revenue since, the petitioner no.1 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 no.1 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 no.1 to carry on its business.

10. I find from the submissions made by the respondents that unless, the petitioner no.1 files his returns, the respondents cannot determine the final liability.

11. 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 10^{th} January 2022 cancelling the registration of the petitioner no. 1 subject to the condition that the petitioner no.1 files his returns for the entire period of default and pays requisite amount of tax and interest and fine and penalty. As a sequel thereto, the order passed by the Appellate Authority on 16^{th} May 2024 is also set aside.

12. 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 no.1'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.

13. 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 no.1 can file his returns, pays requisite amount of tax and interest and fine and penalty.

14. With the above direction and observations, the writ petition being WPA 21499 of 2024 is disposed of without any order as to costs.

15. 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.)