Item no.
14
23.04.2024
Saswata

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

WPA 845 of 2024

Subholaxmi Rice Mills Private Limited
versus
Superintendent, Cooch Behar I Range & Anr.

Ms. Matan Chakraborty
...For the petitioner

Mr. Ratan Banik
Mr. Biswaraj Agarwal
Mr. Saptarshi Banik
...For the respondents

1. The present writ application has been filed, inter alia, challenging the order of cancellation of registration of the petitioner under the WBGST Act, 2017, effected vide notice dated 17th March 2021.
2. It is the petitioner's case that originally a show cause notice for cancellation of registration of the certificate issued under the WBGST Act was issued on 30th April 2020. The same was served on the petitioner vide an e-mail communication. The ground for issuance of show cause was the failure on the part of the petitioner to file its returns for six months.
3. Ms. Chakraborty, learned advocate appearing for the petitioner submits that although, by reasons of the pandemic, the petitioner could not file its response, the respondent no. 1 had purportedly effected the order of cancellation on 17th March 2021. The order of cancellation was issued without affording an opportunity of hearing to the petitioner.

4. It is further submitted that from the aforesaid communication dated 17th March 2021 it would appear that no liability has been thrust on the petitioner. By drawing attention of this Court to a judgment delivered by the Division Bench of this Court in MAT 1376 of 2022 with IA No. CAN 1 of 2022 on 1st September 2022 in the case of ***Bisweswar Midhya, Proprietor of Midhya Construction vs. The Superintendent, CGST & CX Range V, Haldia II Division, Haldia CGST & CX Commissionerate & ors.*** it is submitted that the object of the GST Act would be defeated if the petitioner's registration is not permitted to be revived. In such event, the petitioner shall not be in a position to carry on its business and the same would be counter- productive to the interest of the revenue.
5. It is submitted that the respondents should not treat the petitioner as a person hostile to the department. It is not the case of the respondents that the petitioner adopted dubious process to evade payment of tax. From the order of cancellation it would not appear that the petitioner had evaded any tax. Having regard to the aforesaid it is submitted that the cancellation of the petitioner's registration should be revoked as the petitioner is ready and willing to comply with the provisions of the GST Act. The petitioner is also ready and willing to pay any

tax liability that may be imposed by the respondents.

6. Mr. Maity, learned advocate appearing for the respondents on the other hand submits that in the instant case, after initiating due process, the petitioner's registration had been cancelled. He, however, could not provide any explanation as to how the show cause notice was issued on 30th April 2020 when the entire country was under lockdown.
7. Insofar as the question of evasion of tax is concerned, it is submitted that unless, the petitioner files its returns, it is difficult for the respondents to determine the final tax liability.
8. Heard the learned advocates appearing for the respective parties and considered the materials on record.
9. From the proceedings initiated by the respondents it would transpire that the show cause notice was issued on the petitioner for cancellation of the petitioner's registration on account of failure on the part of the petitioner to file its returns. Incidentally, the said show cause notice was issued at a point of time when the country was under lock down. Although, the cancellation order of the petitioner's registration dated 17th March 2021 records that the petitioner had submitted a response on 15th May 2020, I find from the pleadings filed by the petitioner that the petitioner was denied such opportunity to file its response.

10. Be that as it may, taking into consideration the fact that suspension/revocation of license would be counter productive and works against the interest of the revenue since, the petitioner in such a case would not able to carry on its 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 its business.
11. It is not the case of the respondents that the petitioner has been adopting dubious process to evade tax. I find from the submissions made by the respondents that unless the petitioner files its returns, the respondents cannot determine the final liability. Having regard to the aforesaid, I am of the view that cancellation of the petitioner's registration should be revoked, with a further direction on the petitioner to forthwith file its returns, for the respondents to determine the tax liability. Once, the returns are filed, the respondents shall determine the liability, if at all.
12. In the light of the aforesaid, the writ application being WPA 846 of 2024 is disposed of without any order as to costs.
13. All parties to act on the basis of the server copies of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)