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29.04.2024
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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

WPA 901 of 2024

Tapas Kumar Saha
versus
The Commissioner, CGST and CEx, Siliguri
CGST Commissionerate & Ors.

Mr. Bikramaditya Ghosh
Ms. Supriya Singh
...For the petitioner
Mr. Ratan Banik
Mr. Biswaraj Agarwal
...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 Central Good and Services Tax Act, 2017(hereinafter referred to as the "CGST Act") dated 16th December, 2022.
2. Mr. Ghosh, learned advocate representing the petitioner by drawing attention of this Court to the order of cancellation submits that the said order has been passed in complete non-application of mind and in mechanical manner.
3. It is submitted show-cause notice was issued during the Covid period. Although the petitioner had responded to the same which is also reflected in the order of cancellation, the respondents arbitrarily and in the most mechanical manner had purported to pass the order of cancellation on 16th December, 2022 on the ground "no response has been given. If

any tax liability will be found out that will be recovered as per Section 29(3) of CGST Act".

4. Although the petitioner had preferred an appeal from the aforesaid order, the same was rejected by the Appellate Authority, as the same was barred by limitation. The Appellate Authority while passing the order dated 21st February, 2024, under Section 107 of the CGST Act, did not take into consideration the fact that the petitioner would suffer irreparable loss in the event, the said appeal is not admitted. The authorities also did not take into consideration the explanation given by the petitioner as regards the condonation of delay in preferring the aforesaid appeal.

5. Mr. Banik, learned advocate representing the respondents on the other submits that the aforesaid issue can be finally disposed of by this Court. He submits that the department is interested in collecting revenue. It is only because the petitioner did not file returns that a show-cause notice was issued. He, however, has no explanation to offer as regards the observations made in the order of cancellation dated 16th December, 2022 where it has been observed that on the basis of response given by the petitioner, the same had been rejected on the ground "no response has been given by the petitioner".

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

record. I find that the order passed by the authorities to be self-contradictory. Further, the aforesaid issue is covered by the judgment delivered in the case of **Subholaxmi Rice Mills Private Limited vs. Superintendent, Cooch Behar I Range & Anr.**, passed in **WPA 845 of 2024**, delivered on 23rd April, 2024. I find that in the aforesaid judgment, this Court taking into consideration the fact that suspension/revocation of license would be counterproductive and works against the interest of the revenue had been pleased to direct that the cancellation of registration should be revoked. Similarly in this case I find that the petitioner is interested to carry on business and the continuance of cancellation of registration would only act contrary to the interest of revenue. 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 which would ultimately impact recovery of tax. As such, 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. It is not the case of the respondents the petitioner had 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, subject to the condition that the petitioner shall forthwith file its returns for the entire period of default and pays requite amount of tax, interest and fine. Once, the returns are filed, the respondents shall be at liberty to determine the liability, if at all.

7. It is made clear that if the petitioner complies with the directions as noted above within four weeks from the date of receipt of server copy of this order the petitioner's registration under the said Act shall be restored by the Jurisdictional Officer and the order of cancellation of registration dated 16th December, 2022 as appearing at page 15, being the Annexure-P2 to the present writ petition shall stand quashed. However, if the petitioner fails to comply with the above direction, the benefit of this order shall not enure to the petitioner.

8. For the purpose of compliance of the above directions, the respondents are directed to open the portal within one week from date so that the petitioner can file its returns pay tax, interest and fine.

9. In the light of the aforesaid, the writ petition, being WPA 901 of 2024 is disposed of without any order as to costs.

10. 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.)