

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

33 08.4.2024
Sc Ct. no.2

WPA 1254 OF 2023

M/s. Akram Hossain
represented by is sole proprietor
Akram Hosam

Vs.

Assistant Commissioner of CGST and
Central Excise, Jalpaiguri Central
Goods And Service Tax And Central
Excise Division & Ors.

Mr. Jagriti Mishra
Ms. Ananya Bhattacharya
Mr. Raj Kumar Mitra
Ms. Mrinmayee Das.

....For the Petitioner

Mr. Ratan Banik
Mr. Bishwa Raj Agarwal.

....For the Respondent
No.1& 2

Mr. Subir Kumar Saha
Mr. Momenur Rahman.

....For the Respondent
No. 3/State

The petitioner challenges the cancellation of registration under the **West Bengal Goods and Service Tax Act, 2017** (for short the said Act) dated **February 3, 2022, Annexure-P4 at page 29** to the writ petition. The said cancellation of registration was followed by issuing a **Show Cause Notice** dated **November 29, 2021, Annexure-P3 at page 28** to the writ petition. The petitioner admittedly has not replied to the said Show Cause

Notice and no such reply to Show Cause has also been disclosed in this writ petition.

Mr. Jagriti Mishra, learned counsel appearing for the petitioner submits that, the said Show Cause Notice issued was wholly without jurisdiction and the same is not tenable in law in any manner. He prays for setting aside of the said Show Cause Notice and consequently quashing of the said cancellation of registration.

Mr. Ratan Banik, learned counsel appears for the respondent nos. 1 and 2.

Mr. Momenur Rahman, learned State counsel appearing for the respondent nos. 3 to 5.

Both the learned counsel for the respondents submit that, an ***Amnesty Scheme*** was also in vogue till ***June 30, 2023***. The relevant notification in this regard dated ***March 31, 2023***, issued by the ***Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs***, handed over to this Court, is taken on record.

Learned counsel for the respondents further submit that, the petitioner chose not to avail of the said ***Amnesty Scheme***.

Considering the issue involved in this writ petition and considering the submissions made on

behalf of the parties it appears to this Court that, admittedly the petitioner did not reply to the said **Show Cause Notice** dated **November 29, 2021**.

The Writ Court in exercise of its power under Article 226 of the Constitution of India shall proceed slow while interfering with the Show Cause Notice, unless the same is *ex facie* tainted with malice or wrongful exercise of jurisdiction. Whatever defence the petitioner intends to take against the said Show Cause notice it could have taken by replying the said Show Cause Notice, and then the same could have been decided by the jurisdictional adjudicating authority. However, the petitioner did not reply to the said Show Cause Notice, as a result, the petitioner has suffered the cancellation of its registration.

Considering the above and considering the fact that, by virtue of cancellation of the registration the business of the petitioner has been stopped, for the ends of justice, this Court thinks that, an opportunity may be given to the petitioner to reply to the said Show Cause Notice and a decision shall be taken thereupon by the jurisdictional adjudicating authority.

Accordingly, the petitioner shall be at liberty to submit its detailed reply to the said **Show Cause**

Notice dated **November 29, 2021, Annexure-P3 at page 28** to the writ petition positively within a period of **two weeks** from date.

The petitioner shall be at liberty to take whatever point it wishes to take in support of its defence in such reply.

In the event such reply is submitted, as directed above, the jurisdictional adjudicating authority shall decide the same by passing a reasoned order in accordance with law positively within a period of **three weeks** from the date of receiving such reply. The reasoned order then shall be communicated to the petitioner within a further period of **one week** from the date of the said reasoned order to be passed.

In the event, the reasoned order goes in favour of the petitioner, then automatically the jurisdictional authority shall give effect thereto by **withdrawing and recalling** the said cancellation of registration dated **February 3, 2022, Annexure-P4 at page 29** to the writ petition and such cancellation of registration will have no effect or further effect in that event. In the event the said cancellation of registration is recalled and withdrawn then the petitioner shall take all consequential steps strictly in accordance with law.

It is made clear that, this order shall not create any right or equity in favour of the petitioner, in the event the petitioner is found not eligible to sustain its defence to be submitted through its reply, strictly in accordance with law.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

On the above terms, this writ petition, **WPA 1254 of 2023** stands ***disposed of***, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)