08.01.2024
Item No.22
gd

WPA/2446/2023

MAHUYA SINHA
VS
JOINT COMMISSIONER OF REVENUE
STATE TAXES (W.B.), COOCH BEHAR
CHARGE & ORS.

Mr. Boudhayan Bhattacharyya,
Ms. Stuti Bansal
..for the Petitioner.

Mr. Subir Kumar Saha,
Mr. Dilip Kumar Agarwal
..for the State.

Mr. Ratan Banbik,
Mr. Bishwaraj Agarwal,
Ms. Deepika Gupta
..for the Respondent Nos.5 and 7.

The petitioner has prayed for setting aside the order dated July 14, 2023 (which was signed on 14th August, 2023) passed by the respondent no.2 i.e. the adjudicating authority thereby cancelling the certificate of registration of the petitioner which was subsequently affirmed by the order dated 19th September, 2023 passed by the respondent no.3 i.e. the appellate authority.

On the basis of an inspection carried out at the declared place of business of M/s Hindusthan Enterprise on 15th June, 2023, a report was prepared by the Joint Commissioner of Revenue, State Tax

Authority, being the respondent no.1, wherein it was observed that the registered taxable person (for short "RTP") has suppressed its outward supply to evade tax in contravention of the provisions of CGST Act, 2017 and WBGST Act, 2017 read with Rules framed thereunder.

Thereafter the show cause notice dated 10th July, 2023 was issued asking the petitioner to show cause as to why her registration should not be cancelled for the following reasons:

> "1. Rule 21(a)-person does not conduct any business from declared place of business
>
> 2. Rule 21(b)-persons issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder."

The petitioner replied to the show cause notice and the adjudicating authority passed an order dated July 14, 2023 (which was signed on 14th August, 2023) thereby cancelling the registration of the petitioner with effect from 19th November, 2018.

The petitioner preferred an appeal against the aforesaid order of adjudication and the appellate authority by the order dated 19th September, 2023 disposed of the appeal by refusing to interfere with the order of the adjudicating authority.

Mr. Bhattacharyya, learned advocate appearing for the petitioner submits that the adjudicating authority as well as the appellate authority travelled beyond the show cause notice inasmuch as the petitioner was directed to show cause as to why her registration should not be cancelled for alleged violation of Rule 21(a) and 21(b) whereas the registration stood cancelled by the adjudicating authority for violation of Rules 21(a), 21(b) and 21(e) of the CGST Act, 2017 and WBGST Act, 2017.

He further submits that that the registration of the petitioner was cancelled on the basis of the statements of her husband who, according to Mr. Bhattacharyya, do not have any authority to make any comment and/or submission with regard to the business of the petitioner.

Mr. Bhattacharyya further submits that though the address of the place of business of the petitioner as well as her husband is same, but the fact remains that the petitioner and her husband are carrying on business from well demarcated portions of the said property.

He further submits that the books of accounts of the petitioner as well as her husband are being maintained separately.

He submits that the respondent authorities while cancelling the registration of the petitioner was swayed by the fact that the signboard of the petitioner Enterprise was not available at the entry point of the business premises.

Mr. Agarwal, learned advocate appearing for the State submits that the petitioner and her husband are carrying on business from the same premises. The property is not demarcated. At the time of inspection the husband of the petitioner could not segregate the goods which belongs to the business of the petitioner as well as himself. He further submits that the adjudicating authority as well as the appellate authority are well reasoned orders and, therefore, this court exercising its power of judicial review should not interfere with the orders passed by the respondent authorities.

Mr. Banik, learned advocate appears for the CGST authorities and supports the argument of Mr. Agarwal.

Heard the learned advocates for the parties and perused the materials placed.

The basis of the issuance of show cause notice is the report of the Joint Commissioner of Revenue/ State Tax dated 15th June, 2023 wherefrom it appears that inspection was carried out at the declared place of business of M/s. Hindusthan Enterprise i.e. the declared place of business of the husband and not the petitioner herein.

It further appears that the husband of the petitioner was asked to segregate and/or to differentiate the place of business of M/s. Hindusthan Enterprise and M/s. Jupiter Infotrack i.e. the business of the writ petitioner and the husband of the petitioner was also asked to segregate the physical stock of both the parties.

Upon going through the said report it appears to this court that the Joint Commissioner of Revenue made his observations only on the basis of the statements of the husband of the petitioner and it does not appear from the said report that the petitioner herein was given any opportunity to explain as to whether the declared place of business of M/s Jupiter Infotrack was a demarcated one or as to whether the stock is in physical existence in so far as the business of the petitioner is concerned.

It also appears that the purpose of inspection was to inspect the declared place of business of the husband and not of the petitioner.

It was observed in the said report that the petitioner/RTP contravened Rule 18(2) of CGST Rules, 2017 and WBGST Rules, 2017. It was also observed in the said report that the RTP has suppressed its outward supply to evade tax.

However, on the basis of such report dated 15^{th} June, 2023 a show cause notice dated 10.07.23

was issued alleging that the petitioner does not conduct any business from declared place of business and also that the petitioner issues invoices or bills without supply of goods or services or both in violation of the provisions of the Act or the Rules made thereunder.

After going through the order of the adjudicating authority dated July 14, 2023 (which was signed on 14th August, 2023), this court finds that the registration of the petitioner was cancelled under Sections 29(2)(a) and Section 29(2)(e) of the CGST Act, 2017 and WBGST Act, 2017 read with Rules 21(a), 21(b) and 21(e) of the CGST Rules, 2017 and WBGST Rules, 2017. Though the registration of the petitioner was cancelled by invoking Section 29(2)(e) of the CGST Act, 2017 and WBGST Act, 2017 but the show cause was not issued under the provisions of Section 29(2)(e) nor any inquiry under the provisions of Section 29(2)(e) appears to have been conducted by the respondent authority.

Section 29(2)(e) states that the proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit where registration has been obtained by means or fraud, wilful misstatement or suppression of facts.

Such allegation does not appear to have been leveled against the petitioner in the show cause notice. That apart, the show cause notice alleges about violation of Rule 21(a) and 21(b) only whereas the provisions contained in Rule 21(e) was also invoked for cancelling the registration of the petitioner when the same was not the ground of show cause notice.

It further appears from the order of the adjudicating authority that no signboard of the business of the petitioner (though mentioned in the order as Galaxy Infotrack) is displayed at the entry of the declared place of business.

It appears to this court that the adjudicating authority also invoked Rule 18(2) while cancelling the registration although the same was not an allegation in the show cause notice.

It is the cardinal principle that the show cause notice must contain the allegation on which the authority proposes to initiate an action/proceeding so as to enable the noticee to deal with such allegation effectively.

In the case on hand, the authorities travelled beyond the show cause notice while passing the impugned order.

The appellate authority mechanically affirmed the order of the adjudicating authority without applying its mind as to whether the adjudicating authority travelled beyond the scope of the show cause notice.

Therefore, for the aforesaid reason, this court is of the considered view that the order of adjudicating authority dated July 14, 2023 (which was signed on 14th August, 2023) as well as the appellate order dated 19th September, 2023 calls for interference.

The report dated 15.06.2023 is the observation made by the authority on the statements of the husband and not the writ petitioner. The show cause notice dated 10.07.2023 is without any foundation for which the same is liable to be set aside.

The order of adjudicating authority dated July 14, 2023 (which was signed on 14th August, 2023) and the order of the appellate dated 19th September, 2023 are set aside and quashed. The show cause notice dated 10th July, 2023 is also set aside and quashed.

The respondents are directed to take all consequential steps in terms of this order.

This order shall not, however, prevent the respondent authorities from issuing a fresh show cause notice in accordance with law.

With the above directions, the writ petition stands allowed.

(HIRANMAY BHATTACHARYYA, J.)