13.05.2025
Item No.32
gd/ssd

MAT/611/2025
ED AND F MAN COMMODITIES INDIA PVT. LTD.
VS
THE ASSISTANT COMMISSIONER STATE TAX AND ORS.
IA NO: CAN/1/2025

Mr. Somak Basu,
Mr. Swagato Kabiraj
..for the Appellant.

Mr. Tanoy Chakraborty
..for the State.

1. This intra court appeal by the writ petitioner is directed against the order dated 7th April, 2025 in WPA 10537 of 2024.

2. In the said writ petition the appellant had challenged the orders passed by the original authority affirmed by the appellate authority by which the appellant's registration under the provisions of the WBGST Act was cancelled with effect from 1st July, 2017.

3. The challenge to the order of cancellation as well as the appellate authority's order was on the ground of lack of jurisdiction and that the show cause notice was devoid of any reasons and the order passed by the original authority cancelling the registration was devoid of reasons and equally the order passed by the appellate authority.

4. Further, the appellant had approached the writ court earlier and during the pendency of the matter thought fit to approach the appellate authority, therefore, withdrew the writ petition and filed a statutory appeal and according to the appellant, the appellate authority also proceeded beyond the scope of show cause notice in placing reliance on an inspection report drawn on 14.12.2021 which was one-day prior to the date of the show cause notice which was waited 15.12.2021.

5. Therefore, it is submitted that the inspection report could not have been relied upon without copy being furnished to the appellant, more particularly when Rule 25 of the CGST Rules mandates with such report along with all material connected thereto should be uploaded within a period of 15 days which has not done.

6. The learned writ court has dismissed the writ petition and aggrieved over which, the appellant before this court.

7. We have elaborately heard the learned advocates for the parties and carefully perused the materials placed on record.

8. The scope of consideration of the grounds on which the appellant had challenged the impugned orders is limited in a proceedings under Article 226 of the Constitution though this court can at times

examine the correctness of the appellate authority's order as well as the original authority's order by considering the merits of the matter since the dealers have invoked the extraordinary jurisdiction of this court under Article 226 of the Constitution on account of non-availability of statutory remedy before the tribunal because the tribunal is yet to be constituted.

9. However, in the instant case on perusal of the show cause notice dated 15.12.2021, we find the same is bereft of any particulars.

10. The appellant was granted time to submit the reply and appeared before the authority on 24.12.2021 at 12.10 p.m.

11. The appellant submitted its reply on 21.12.2021 while denying the allegation also requesting that they may be provided an opportunity to furnish additional submission.

12. However, on 22.12.2021 the registration has been cancelled without any reference to the appellant's representation dated 21.12.2021.

13. In any event since the show cause notice did not contain any reasons, it is a notice which is nonest in the eye of law as the appellant did not have adequate opportunity to rebut the allegations against it since the allegations were not set out in the show cause notice.

14. This inherent defect goes to the root of the matter which cannot be cured or rectified at a subsequent stage or in the appellate stage.

15. Subsequently the appellant filed an application for revocation of the cancellation of registration for which show cause notice was issued on 19.4.2023 and on perusal of the same, we are unable to decipher anything out of the show cause notice since it does not clearly state as to what are the reasons for revocation.

16. Nonetheless, the appellant had submitted replies on 17.4.2023 and 26.4.2023.

17. Further, by representation dated 2nd May, 2023 the appellant requested the matter be deferred since the writ petition was pending and they filed a supplementary affidavit in WPA 6411 of 2023.

18. However, the order came to be passed and subsequently the writ petition was withdrawn and the appellant resorted to the appellate remedy available under the Act. The appeal was rejected by order dated 30.11.2023 and on perusal of the internal page 8 of the order in paragraph 2 the appellate authority clearly refers to the inspection report dated 14.12.2021 which was drawn one-day prior to the issuance of the show cause notice and copy of which has not been furnished to the appellant.

19. These are all sufficient to hold that there has been serious violation of principle of natural justice and the appellant was not afforded any opportunity to put forth its contentions.

20. The learned Government counsel referred to an interim order passed during the pending of the writ petition dated 17.1.2025 submitted that the appellant did not challenge the said order.

21. In any event any interim order merges with the final order and the appellant has questioned the final order passed in the writ petition, it will be well open to the appellant to canvas all the grounds.

22. In the light of the above undisputed factual position, we have to hold that the initiation of the proceedings by issuance of the show cause notice is flawed.

23. Consequently, all subsequent proceedings have to fail on the ground of error of jurisdiction as well as on the ground of violation of principle of natural justice.

24. Having held so, the necessary corollary that has to follow is to remand the matter back to the original authority to decide the matter afresh after affording due opportunity to the appellant.

25. Accordingly, the appeal is allowed. The order passed in the writ petition is set aside. The writ petition is allowed. The orders impugned in the writ

petition are set aside including the show cause notice dated 15.12.2021 with the direction to the adjudicating authority to issue a fresh show cause notice including copy of the inspection report dated 14.12.2021, afford reasonable time to the appellant to submit its written explanation along with supportive documents after which an opportunity of personal hearing be afforded to the authorized representative of the appellant and fresh orders be passed on merits and in accordance with law.

26. The appellant will be entitled to canvas all grounds both factual and legal including the ground that retrospective cancellation of the registration could not have been done.

27. The appellant shall cooperate in the disposal of the proceedings and no request for adjournment shall be entertained.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)