

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 10537 of 2024

Reserved on : 29.01.2025

Pronounced on: 07.04.2025

ED & F Man Commodities India Pvt. Ltd.

...Petitioner

-Vs-

The Assistant Commissioner, State Tax & Ors.

...Respondents

Present:-

Mr. Somak Basu

Mr. Nilanjan Bhattacharya

... for the petitioner

Mr. A. Ray

Mr. Md. T.M. Siddiqui

Mr. T. Chakraborty

Mr. S. Sanyal

... for the State

Rajarshi Bharadwaj, J:

1. Learned Counsel appearing for the petitioner submits that the petitioner became a registered dealer under the West Bengal Goods and Services Tax Act, 2017, effective from July 1, 2017 and carried out business activities during the financial year 2017-18, procuring 11,876 MT of sugar and selling the entire stock by March 2018. However, due to significant financial losses in the financial year 2018-19, the petitioner ceased business operations in the

State of West Bengal. Despite the absence of transactions, the petitioner diligently filed nil returns under the GST Act up to November 2021 and annual returns up to the financial year 2019-20.

2. On November 15, 2021, respondent no. 1 issued a show-cause notice alleging that the petitioner had fraudulently obtained registration through suppression of facts or wilful misstatement, without presenting any evidence to substantiate the claims. The petitioner responded to the notice and sought additional time for compliance, citing challenges posed by the ongoing COVID-19 pandemic. However, respondent no. 1 mechanically cancelled the petitioner's GST registration with retrospective effect from July 1, 2017.

3. Aggrieved by the cancellation, the petitioner filed an appeal under Section 107 of the GST Act along with an application for condonation of delay of 116 days. However, the appellate authority rejected both the appeal and the application without adequately addressing the petitioner's grounds.

4. In addition, from August 2022, the petitioner's buyers began receiving notices regarding alleged wrongful availment of Input Tax Credit (ITC) on transactions carried out during the financial year 2017-18. This prompted the buyers to demand refunds from the petitioner for amounts equal to the denied ITC, further compounding the petitioner's financial and legal challenges.

5. Subsequently, the petitioner filed a writ petition before this Hon'ble Court seeking permission to apply for revocation of cancellation of the registration. During the pendency of the writ petition, the Ministry of Finance issued Notification No. 3/2023-GST, allowing taxpayers to apply for revocation of cancellation of registration. Acting under the notification, the petitioner submitted an application for revocation (ARN AA-190423029382C).

6. However, on June 13, 2023, respondent no. 1 rejected the application, citing a purported physical verification report dated November 14, 2021. The petitioner emphasizes that the report was never mentioned in the original show-cause notice, depriving the petitioner of the opportunity to contest its

findings. Dissatisfied, the petitioner filed an appeal under Section 107 of the GST Act, 2017, read with Section 108(1) of the GST Rules, 2017.

7. The appellate authority, respondent no. 2 herein, through its order dated November 30, 2023, upheld the decision of respondent no. 1 solely based on the verification report and an additional inquiry report dated November 24, 2023. The petitioner submits that neither any report was served upon them nor made available through the common portal as required under Rule 25 of the GST Rules, 2017, thereby violating the principles of natural justice.

8. Pursuant to the order dated January 17, 2025 passed by this Hon'ble Court, the Learned Counsel representing the petitioner duly communicated the said order to one of the Directors of the petitioner Company, instructing him to ensure the availability of an authorized employee at the principal place of business and to extend full cooperation to the Revenue Officer(s) for conducting the physical verification as directed by this Hon'ble Court.

9. In compliance with the said order, an employee of the petitioner was stationed at the designated premises on January 17, 2025 from 2:00 p.m. onwards; however, no Revenue Officer(s) arrived to conduct the physical verification until 6:00 p.m. on the same date. In order to substantiate the presence of the petitioner's representative at the said premises, photographic evidence capturing the exact date, time, and location was recorded. Additional photographic evidence was subsequently captured on 18th, 20th and 21st January, 2025.

10. It is noteworthy that January 17, 2025 fell on a Friday, and as per the standing business policy of the petitioner Company, employees are permitted to work remotely on Wednesdays and Fridays of every week, which is duly corroborated by an official email issued by the HR & Admin Department of the petitioner's Head Office dated 1st August 2024.

11. Subsequent to the events of January 17, 2025, a Whole-Time Director of the petitioner company travelled from its Mumbai Headquarters to the principal place of business at 303, 3, 55/1A, Vinayak Complex, Kolkata - 700 006 on January 20, 2025. On the same day, he personally approached respondent nos. 1 & 2, submitting a formal request for a physical verification of the business premises, as no verification had been conducted while the petitioner's representative was available. However, the respondents verbally stated that the verification had already been conducted, and the premises were found to be non-existent, a claim that is contrary to the material evidence and photographic records.

12. It is pertinent to note that since the suspension of the petitioner's GST registration on December 15, 2021, no business transactions have been undertaken within the State of West Bengal. The petitioner has merely maintained its business premises in anticipation of the reinstatement of its registration to recommence business operations.

13. The petitioner disputes the respondents' allegations concerning the absence of a signboard at the business premises, as contradicted by photographic evidence dated 19th June, 2024, which clearly displays the GST identification number of the petitioner.

14. Thus, the Learned Counsel for the petitioner submits that in light of the aforementioned factual discrepancies and legal infirmities, the alleged verification report dated January 17, 2025 is arbitrary, erroneous, and devoid of evidentiary value, thus warranting its quashing and setting aside by this Hon'ble Court.

15. The learned counsel for the respondent authorities submits that the Deputy Commissioner, Jorasanko & Jorabagan Charge, under the Directorate of Commercial Taxes, Government of West Bengal being the competent officer who conducted the verification as per the direction of the Hon'ble Court submits that the aforementioned writ petition was taken up for consideration

on January 17, 2025, when this Court direct the competent officer, to visit the principal place of business and submit a fresh verification report.

16. The Learned Counsel submits that pursuant to the aforesaid order, the competent officer visited the principal place of business at approximately 2:00 PM and had conducted a verification. In compliance with the direction of this Hon'ble Court, a detailed report has been prepared along with the relevant enclosures which is mentioned hereunder:

“M/s ED and F Man Commodities India Private Limited

GSTIN: 19AABCE5460GIZO

*Declared place of business: 3, 303, 55/ 1A Vinayak Complex,
Strand Road, Kolkata- 700006*

Date: 17/01/2025

Time: 2:00 pm.

The Hon'ble High Court at Calcutta in WPA 10537 of 2024 has ordered the undersigned to conduct a spot enquiry at the registered place of business of M/s ED and F Man Commodities India Private Limited (Petitioner) at 3, 303, 55/1A Vinayak Complex Strand road, Kolkata-700006, to verify the existence of the petitioner.

Accordingly, I pay a visit at the above noted address and met a person named Shyam Sundar Rout, who introduced himself as the gatekeeper of the building. I disclosed my identity and the purpose of my visit. He declared his willingness to co-operate with me. Accompanied by him, I reached the 3rd floor. I do not find any signboard bearing the name of M/s ED and F Man Commodities India Private Limited. I have searched all the room in the 3rd floor and the names of the existing business are noted hereunder:

(1) Anand Transport (2) Om Edible Oil & Fats Pvt. Ltd. (3) Chhedilal Agarwal (4) Siddharth Sugar Co. (5) Shayam Cereals (6) Shyam Cereals Mills Pvt. Ltd. (7) Kejriwal Sweetners LLP .

I asked the gatekeeper Sri rout about the business activities of M/s ED and F Man Commodities India Private Limited. Sri Rout declared that he is working here since 15(fifteen) years but never seen any signboard in that name and never seen any business activities in the name of the petitioner. I enquired about the directors of the petitioner (1) Nilay Atul Mehta (2)

Sandeep Shantarau Kadaun. Sri Rout declared that he had never heard any such name/person.

I found that the building consists of 5(five) storeys. The ground floor consists of the gatekeeper's room and lift room. In the 4th floor only the following businesses exists:-

(1) B.D Agarwal & Co. (2) B.D Agrotech Pvt. Ltd. (3) Inframandi Technologies Pvt. Ltd. (4) Shree Subh Enterpris.

In the 2nd floor only the following businesses exists:-

(1) Hansha Tradecom Pvt. Ltd. (2) Akash Agrofood Pvt. Ltd. (3) Global Proteins Pvt. Ltd. (4) Puja Agro Products.

In the 1st floor only the following businesses exists:-

(1) Shree Narsing Agro Products (Pvt.) Ltd. (2) Lakshmi Enterprises (3) Shruti Enterprises (4) Narayani Earth Movers (P) Ltd. (5) Savita Agro Products Private Limite (6) Savita Trading Co. (7) Savita Enterprise (8) Savita International (9) Savita Overseas (10) Basu Deo Agrwal Huf. (11) Kharagpur Flour Mills Pvt. Ltd. (12) Wisdom & Strength Educational Foundation (13) Wellworth Traders Private Limited. (14) Growth Tradelink Pvt. Ltd. (15) Chaitanyashree Infrarealty Pvt. Ltd. (16) Shree Shakambari Agri Mills Pvt. Ltd.

Sri Shyam Sundar Rout again confirms that he had never seen any business activities in the name of M/s ED and F Man Commodities India Private Limited since 15 years and never heard the names of directors.

So it is evident that M/s ED and F man Commodities India Private Limited never existed or conducted any business at 3, 303, 55/1A Vinayak Complex Strand Road, Kolkata-70000.

Reporting is completed by 3:15 pm. Sri Shyam Sundar rout agrees to sign the report.

Sd/-

AMARENDRA NATH BISWAS, W.B.R.S

DEPUTY COMMISSIONER OF STAE TAX

JORASANKO & JORABAGAN CHARGE

JALASAMPAD BHAWAN

DF BLOCK, SALT LAKE, KOLKATA-700091

17. Upon hearing the submissions made by both parties, this Court is of the opinion that the present writ petition is devoid of merit and is accordingly dismissed as the petitioner's contention regarding the retrospective cancellation of GST registration on the grounds of an unsubstantiated show-cause notice lacks sufficient legal basis. The competent authority exercised its jurisdiction within the framework of the West Bengal Goods and Services Tax Act, 2017 and followed due process in issuing the cancellation order. Moreover, the respondent authority's rejection of the petitioner's appeal and condonation of delay application does not demonstrate any procedural irregularity or violation of principles of natural justice. The petitioner was afforded multiple opportunities to present its case but failed to produce satisfactory explanations or evidence to justify the continuation of its GST registration.

18. With regard to the verification report dated January 17, 2025, it is observed that the competent officer, acting under the direction of this Court, conducted a physical verification of the petitioner's principal place of business and submitted a detailed report. The findings of the verification indicate that the business premises were not operational, which aligns with the prior cancellation of registration due to non-compliance.

19. The petitioner's reliance on photographic evidence to dispute the verification report lacks substantive weight. Therefore, this Court finds that the respondents' actions, including the cancellation of GST registration and rejection of revocation applications, were based on sound legal principles and documentary evidence.

20. The petitioner's assertion that the verification process was conducted arbitrarily is not borne out by the records. The competent authority has furnished a verification report in compliance with this Court's direction and no procedural lapses have been established that would warrant judicial interference.

21. For the foregoing reasons, this Court does not find any grounds for quashing the verification report or directing reinstatement of the petitioner's GST registration. The petitioner has failed to establish any legal or factual infirmity in the actions of the respondent authorities.

22. Accordingly, the writ petition is dismissed. All pending applications are accordingly disposed of.

23. There shall be no order as to costs.

24. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata
07.04.2025
PA (BS)