

09.09.2025
Item No.14
Ct. No.01
RP

MAT 1504 of 2025
+
IA No.CAN 1 of 2025

Nikita Agarwal
VS
The Assistant Commissioner of Revenue
Commercial Taxes and State Tax,
Jorasanko Charge & Ors.
With
WPA 8144 of 2025
Nikita Agarwal
VS
The Assistant Commissioner of Revenue
Commercial Taxes and State Tax,
Jorasanko Charge & Ors.

Mr. Ankit Kanodia
Ms. Megha Agarwal
Mr. Piyush Khaitan
Ms. Tulika Roy

....For the Appellant

Mr. Saptak Sanyal

...For State

1. This intra-Court appeal filed by the appellant is directed against the order dated 16.07.2025 passed in WPA 8144 of 2025. By the said order the learned Single Bench did not grant any interim order in favour of the appellant but directed affidavits to be filed. The appellant being aggrieved by such order has preferred this intra-Court appeal. Since the appeal as well as the writ petition lie in a very narrow compass, with the consent of either side of the parties, the writ petition as well as the appeal are taken up for disposal by this common judgment and

order and for such purpose the writ petition is treated as on day's list.

2. The appellant challenged the order passed by the Appellate Authority, namely, the Senior Joint Commissioner of WBGST, Kolkata North & 24 Parganas Circle dated 30th May, 2023 by which the appeal was dismissed affirming the order of cancellation of the appellant's registration with retrospective effect. Learned Single Bench opined that the writ petitioner has approached the Court after a period of two years after the order was passed by the Appellate Authority. The explanation offered by the appellant is that since the Tribunal was to be constituted the appellant had awaited for constitution of Tribunal but as a consequence of rejection of the appeal the appellant's customers received the notice during March 2025 proposing to recover tax on the ground that the appellant's registration has been cancelled retrospectively which prompted the appellant to approach the writ Court. In our view the explanation offered appears to be reasonable and the writ petitioner cannot be thrown out on the ground of laches and delay. Moreover, when the Appellate Tribunal is yet to be constituted.
3. For the purpose of disposal of the appeal and the writ petition disputed questions of facts of the case need not be gone into and the documents are required to

be perused. The authority, namely, the Assistant Commissioner issued show cause notice to the appellant on 24.03.2022 for cancellation of registration of the appellant on the ground that registration obtained by means of fraud, willful misstatement or suppression of facts. The license was suspended with effect from the said date. Show cause notice was issued on 23.05.2022 and the appellant was directed to appear before the authority on 30th May, 2022. Since no reply was submitted by the appellant, the authority, namely the Assistant Commissioner, by order dated 5.4.2022 cancelled the registration with retrospective effect i.e. 9.5.2019. The appellant filed an application for revocation of the order of retrospective cancellation of the registration. Show cause notice was issued on the said application on 2.5.2022. The application was rejected stating that the reply to the show cause notice has not been filed within the time permitted. The case of the appellant is that she appeared before the authority and sought for adjournment. A letter was also given but without adjourning the matter and without considering the request for adjournment the application was rejected. Having left with no other alternative, an appeal was preferred before the Appellate Authority. The appeal was dismissed by order dated 30.05.2023 and on going through the

appellate order we find that for the first time the appellant has made known about the allegations levelled against her by the department. At no earlier point of time the appellant was put on notice about such allegations. In fact, the appellate authority has noted the documents filed by the appellant but has stated that the documents are not related in any way to the instant case. The explanation offered by the appellant is that in the meantime there was an additional place of business and since registration was cancelled details could not be uploaded in the portal. Further, it is pointed by the appellant in paragraph 4 of the appellate authority's order the appellate authority recorded that one Sri Naskar told that she was one of the landlords but she was staying abroad for last ten years. If this is so then the identity of the landlord cannot be disputed by the department. In any event, issuance of show cause notice is not an empty formality as the noticee is entitled to have an effective opportunity to put forth his/her submission. In this regard we take note of the decision of the Hon'ble Supreme Court in the case of Oryx Fisheries Private Limited vs. Union of India & Ors. reported in 2010(13) SCC 427 wherein the Hon'ble Supreme Court pointed out that while reading a show cause notice the person who is subject to it must get an impression that he will get

an effective opportunity to rebut the allegation contained in the show cause notice and prove his innocence. It has been further held that if on a reasonable reading of the show cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence. As pointed out earlier that in the show cause notice the only allegation is that registration has been obtained by fraud, willful misstatement or suppression of fact. The show cause notice is absolutely vague and does not furnish any details nor does it say whether the allegation is that of fraud or willful misrepresentation or suppression of fact. Therefore, the entire edifice of the proceeding has to collapse because of the defective show cause notice at any stage or at a subsequent stage of the proceeding or appellate stage. This inherent defect, which is a jurisdictional error, cannot be rectified.

4. That apart, we have pointed out that cancellation of registration has been made with retrospective effect.

In the show cause notice the authority suspended the license with effect from the date of issuance of the show cause notice and there was no proposal in the show cause notice that cancellation of registration is proposed to be done with retrospective effect. In this regard we take note of the decision in the case of Ramesh Chander vs. Assistant Commissioner of Goods and Services tax, Dwarka Division & Anr. reported in (2024) 14 Centax 318 (Del) wherein the Court took into consideration Section 29(2) of CGST Act 2017 which empowers the proper officer to cancel the GST registration of a person from such date including any retrospective date as he may deem fit and proper if the circumstances set out in Sections are satisfied. The Court held that registration cannot be cancelled with retrospective effect mechanically and it can be cancelled by a proper officer if he deems it fit and proper. Such satisfaction cannot be subjective but must be based on some objective criterion. It was further held that merely because a tax payer has not filed the return for the said period does not mean taxpayer's registration must be cancelled with retrospective date also covering the period when the returns were filed and taxpayers was compelled to do so. Furthermore, the Court also took into consideration the consequential effect of such

retrospective cancellation on the taxpayer's customers and it was held that the taxpayer's registration can be cancelled with retrospective effect only when such consequences are intended and not warranted. In the case on hand nothing is forthcoming from the department as to under what circumstances such power of retrospective cancellation of registration was resorted to. What is apprehended by the Hon'ble Court in Ramesh Chander (supra) as occurred in the assessee's case since the customers have been issued notice for recovery of tax, penalty and interest as pointed earlier if there is an inherent defect in the show cause notice the defect cannot be cured at any stage or subsequent stage of the proceeding nor before the appellate authority. That apart, the department cannot be given a second lease of life to resurrect the matter once again by issuance of a fresh show cause notice.

5. For the above reasons, retrospective cancellation of the appellant's registration and the order passed by the Appellate Authority affirming such retrospective cancellation are bad in law. In the result, the appeal and the connected application as well as the writ petition are allowed and the orders of retrospective cancellation of registration of the appellant is set aside and the authorities are directed to restore the

registration with retrospective effect and thereafter consider the application filed by the appellant for additional place of business in accordance with law.

6. Urgent Photostat certified copy of this judgment and order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

[T.S. SIVAGNANAM]
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]