25.04.2025
Ct. No. 1
S/L 1
(P.A.)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

MAT 117 of 2024
With
CAN 1 of 2025

Mukherjee Veneer Industries
Vs.
The Joint Commissioner, Commercial Taxes, Jalpaiguri Circle and others

Mr. Bikramaditya Ghosh
Mr. Rajiv Paraik
Ms. Supriya Singh
... for the appellant

Mr. Momenur Rahman
Mr. Pradip Sarkar
... for the State

1. The present appellant was seeking a GST registration. The authority has turned down the same on the ground that the petitioner already had a GST registration which was cancelled on account of certain lapses, being the non-filing of returns for a long period. Instead of seeking revocation of the cancellation as contemplated under Section 30 of the West Bengal Goods and Services Tax Act 2017 ("WBGST" for short) the petitioner has sought registration afresh, which cannot be granted for

reasons assigned by the authorities in the orders dated 11.06.2024 passed by the Dy. Commissioner of Revenue (Respondent No.2). This order has been affirmed in the appeal preferred by the petitioner. Affirmation of the appellate authority is by an order dated 04.09.2024 passed by the Senior Joint Commissioner of Revenue (Respondent No.2).

2. These two orders dated 11.06.2024 and 04.09.2024 were assailed by the petitioner in the writ proceedings.

3. The brief factual background relevant for consideration is that the petitioner is a partnership firm carrying on the business of Saw Mill and Manufacturing Plywood. The petitioner was registered under the earlier VAT Act having a VAT number. After coming into force of the WBGST the VAT number was migrated to GST registration. From 01.09.2017 it did not file any returns. The authorities thus issued a show-cause notice for cancellation of its registration in July 2022.Pursuant thereto the registration was cancelled on 06.08.2022 with effect from 01.09.2017.

4. Under Such circumstances the petitioner made an application on 23.05.2024 for GST registration afresh. The petitioner has sought GST registration afresh on the ground that it was unaware of the requirement of filing a monthly return under the newly implemented GST. It is also stated that there was no substantial business turn over for the financial year 2017-18 to 2023-24. Since the business turn over did not cross taxable threshold the petitioner did not apply for restoration of the GST registration. It is only when the petitioner decided to expand its business that it applied for GST registration afresh.
5. The records reveal that the application was considered by the respondent authorities and during consideration they discovered that the petitioner was earlier having a GST registration with GSTIN-19AAUFM5206EIZ3 which was cancelled and that rather than seeking revocation of the cancellation, application has been made for GST registration afresh. They called upon the petitioner to explain the grounds for not applying for revocation.

6. The sum and substance of the petitioner's reply in our opinion, is far from satisfactory. The petitioner has replied to this query in the following terms :

> ***"The time period to restore the GSTIN has also expired and it will be a financial burden and time taking matter for RTP to get it restored by filing WRIT before High Court and pay the late fine from the year 2017."***

7. The Deputy Commissioner Respondent No.2 after due consideration has rejected the application for GST registration afresh by an order dated 11.06.2024 wherein the ground for rejection have been recorded. The Respondent NO. 2 has found that while making an application for GST registration the date of commencement of business has been mentioned as 17.05.2024. The date of commencement of sale under the erstwhile West Bengal VAT Act for the petitioner however is from 07.07.2011. The respondent No.2 has thus found that the petitioner while applying for GST registration afresh has made misleading declaration regarding commencement of business. The grounds for making application for GST registration

afresh instead of going for revocation have not been found to be convincing.

8. Before the appellate authority the petitioner has taken more or less the same grounds that has been urged before the Respondent No.2. In his appeal the petitioner has tabulated his turnover as per the income tax portal and audited balance-sheet under the Income Tax Act to contend that in between the financial Year 2017-18 to financial year 2023-24 turnover of his unit was much below the taxable limit of Rs. 20 lakhs for registration under the WBGST. The petitioner has admitted in his appeal that his earlier VAT registration was migrated to WBGST in July 2017. It is since migration under the WBGST that the petitioner stopped filing his returns.

9. Insofar as the misrepresentation resorted to by the petitioner as regards to the dates of commencement of the business the petitioner has stated in his appeal that such findings are void *ab-initio* because no such allegation had been made by the proper officer in the show-cause notice. Insofar as this issue raised by the

petitioner before the appellate authority the same is also found to be manifestly unsustainable for the simple reason that the findings regarding misrepresentation/misleading statement being made at the time of seeking a GST registration was discovered by the authorities only while processing the application. It is only when the petitioner resorted to such misleading statement at the time of making application for GST registration afresh that the issue of misrepresentation arose. Thus there is no question of an issue of misrepresentation being raised earlier.

10. From the application and appeal filed by the petitioner it is evident that the petitioner was carrying on business in between financial year 2017-18 to 2023-24. The turnover for these eight financial years has been tabulated by the petitioner in his appeal. The fact that the petitioner claims the turn over to be below the taxable threshold cannot be raised so as to justify the petitioner's lapse of not filing returns for nearly 60 (sixty) months, and thereafter applying for GST registration

afresh, that also by making false and misleading statements.

11. The petitioner has also taken a plea before the authorities that he did not apply for revocation because an application for revocation was required to be made within specified time limit. The petitioner had already crossed the limitation for making an application for revocation thus he made the application for GST registration afresh. In this regard the appellate authority in its order rejecting the application has taken note of the fact that the Government of West Bengal had notified a special procedure on 12.04.2023 enabling a registered person whose registration was cancelled on or before 31st December, 2022 and who failed to apply for revocation of cancellation within the time period specified in Section 30 to apply for revocation up to 30.06.2023. Despite such facility being available the appellant chose not to apply for revocation of cancellation of registration and file the pending returns and discharge his liabilities.

12. The appellate authority has further taken into consideration a circular dated 28.03.2019 bearing circular No. 95/14/2019-GST regarding ***"verification of applications for grant of new registration"***.

13. The Ld. Counsel for the petitioner has vehemently submitted that there is no bar under the WBGST for registration afresh, upon cancellation of earlier GST registration. The authority should thus have allowed the GST registration afresh. He has submitted that reliance placed on the circular dated 28.03.2019 to reject the petitioner's application is unsustainable in view of the settled legal proposition that an executive instruction (in this case the circular dated 28.03.2019) cannot override the statutory provisions. In this connection he has placed reliance on the decision of the Hon'ble Apex Court in the case of ***Union of India and Ors. Vs. Arun Kumar Roy*** reported in ***(1986) 1 SCC 675***. We find no force in such submission for the Ld. Counsel for the petitioner.

14. We find that while making application for GST registration afresh, the

petitioner has resorted to misrepresentation of facts regarding commencement of his business. In his appeal he has mentioned turnover for the eight financial year period during which he has not filed any return as required under the WBGST. The same has been given in a tabular form.

15. Insofar as the submission on behalf of the petitioner regarding there being no bar to a fresh registration as claimed by the petitioner, we would like to observe that by now it is a settled legal proposition that taxing statutes require strict interpretation. The WBGST provides a specific provision for revocation of cancellation under Section 30 of the Act. Rule 23 of the West Bengal Goods and Services Tax Rules, 2017 also deals with revocation of cancellation of registration. The same contemplates certain formalities such as filing of returns relating to a period from the effective date of cancellation of registration till the date of order of revocation of cancellation. It also requires certain other formalities to be completed. The petitioner cannot be permitted to avoid

the statutory procedure and requisite formalities apparent from reading of Section 30 with Rule 23 of the WBGST Rules 2017.

16. Despite there being a special procedure for revocation of cancellation under Section 30 of the WBGST notified on 12.04.2023 available to the petitioner, he has chosen not to avail benefit of the same. Therefore the plea raised by the petitioner that his option to get revocation of the cancellation of his GST registration was time barred is also unsustainable.

17. During the course of argument the Ld. Counsel for the petitioner has also submitted that if the petitioner were to go for revocation of cancellation of his earlier GST registration, the same would entail monetary consequence. This reason also, *per se*, cannot be made the basis to justify seeking of a fresh GST registration instead of resorting to the revocation of cancellation of his earlier GST registration as contemplated under Section 30 of the WBGST. The provision for revocation of cancellation in a taxing statute cannot be ignored. Merely because the procedure for

revocation of cancellation is allegedly more cumbersome than a fresh registration and because it involves discharging of some financial liability, cannot be urged as a ground to by pass such statutory procedure and resort to application afresh, that also by resorting to misrepresentation.

18. While interpreting the provisions of a taxing statute a plea of hardship and equity are out of place. The law in this regard is settled as would be apparent from decisions of the Apex Court in the case of ***H.H. Lakshmi Bai and Another vs. Commissioner of Wealth Tax and Others*** reported in ***(1994) 2 SCC 534***, in the case of ***State of Rajasthan and Others vs. Khandaka Jain Jewellers*** reported in ***(2007) 14 SCC 339*** and in the case of ***Prashanti Medical Services and Research Foundation vs. Union of India and Others*** reported in ***(2020) 14 SCC 785***.

19. Insofar as the submission that the circular dated 28.03.2019 is unsustainable, we find the submission to be devoid of any substance. A bare reading of the circular dated 28.03.2019

reveals that the same is a mere reiteration of the various statutory provisions circulated by the department for observance during "verification of applications for grant of new registration".

20. We thus find no infirmity in the order dated 11.06.2024 passed by the respondent No. 2 rejecting the petitioner's claim for GST registration afresh. Its affirmation by the appellate authority (respondent No.1) by an order dated 04.09.2024 also requires no interference.

21. We therefore find no reason to interfere with the order passed by the Hon'ble Single Judge. It will be open to the petitioner to avail the opportunity granted to the petitioner to apply for revoking the *suo motu* order of cancellation. The time for availing such opportunity granted by the Hon'ble Single Judge is extended by four (4) weeks from date.

22. The appeal is accordingly dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)