

05 01.03.2022
RP Ct. No. 16
AN

MAT 112 of 2022
With
IA No. CAN 1 of 2022

Latika Ghosh

vs.

The Commercial Tax Officer/Assistant Commissioner,
West Bengal Goods & Service Tax, Raiganj Charge & ors.

Mrs. Rita Mukherjee
Mr. Himangshu Kr. Ray
Mr. Y. Sundariya

... for the appellant

Mr. A. Ray, learned Government Pleader
Mr. S. Mukherjee,
Mr. Debasish Ghosh

... for the U.O.I.

Mr. K. K. Maiti

... for the respondent 2 & 3

This intra court mandamus appeal filed by the appellant challenging the order dated 20.12.2021 in WPA 19537/2021 by which the learned writ court directed the respondents to file affidavit-in-opposition and did not grant the prayer for interim relief for restoration of the appellant's certificate of registration under the provisions of West Bengal Goods & Service Tax Act and Central Goods & Service Tax Act. With the consent of the learned counsel on the either side the writ petition itself was heard and it is being disposed of by this order along with this appeal.

The authorities under the West Bengal Goods & Service Tax Act (hereinafter referred to as the state authorities) issued show cause notice dated 06.06.2018 proposing to cancel the certificate of registration of the appellant for the reason that they have not filed their

returns for a continuous period of six months. Soon after receipt of the notice, the appellant had filed the return for the period and paid the tax. According to the appellant, late fee for remittance of tax and interest has been paid. By order dated 08.02.2021 the authorities under the Central Goods & Service Tax Act (hereinafter referred to as the central authorities) cancelled the registration certificate of appellant. On a reading of the order dated 08.02.2021 it is seen that reference has been made to the show cause notice dated 06.06.2018 which was undoubtedly issued by the state authorities.

Learned counsel for the central authorities has produced a copy of the show cause notice dated 02.12.2019 and submitted that the appellant was issued show cause notice proposing to cancel the registration for failure to file the monthly returns for a period of six months. However, we find from the order of cancellation of registration dated 08.02.2021, there is no reference to show cause notice dated 02.12.2019. Learned counsel for the appellant further states that the said show cause notice dated 02.12.2019 was never uploaded in the Website.

Thus, we can safely hold that cancellation of the registration dated 08.02.2021 passed by the central authorities is in violation of principles of natural justice and liable to be set aside. So far as the show cause notice issued by the state authorities dated 06.06.2018 the appellant having filed the returns paid taxes as well as the late fee and interest according to their computation filed an

application for revocation of the order for canceling appellant's registration. The state authorities issued show cause notice dated 11.09.2021 calling upon the appellant to explain as to why the application for revocation should not be rejected on the ground that the appellant has not paid late fee for late filing of the returns for the period from 2017-2018, 2018-2019, 2019-2020, 2020-2021 and interest liability for late filing of the returns and called upon the appellant to file their reply within seven days. The appellant submitted their reply as well as additional written statement on 12.09.2021. The said reply was considered and by order dated 06.10.2021 the application for revocation was rejected on the ground that the appellant failed to pay late fee and the interest thereon. The order dated 06.10.2021 does not state as to why the reply given by the appellant to the show cause notice cannot be considered. The order dated 06.10.2021 is devoid of reasons and, therefore, has to be held to be unreasonable, arbitrary and liable to be set aside.

Learned counsel for the central authorities would submit that there was no specific prayer sought for by the appellant in the writ petition to quash the rejection of the application for revocation dated 06.10.2021. This contention appears to be factually incorrect as Prayer (b) in the writ petition challenges the order of rejection dated 06.10.2021.

Having steered clear of the factual issues, we need to point out that the state authorities did not indicate to the

appellant as to how the computation of late fee and interest as done by the appellant while filing the returns for a relevant period is incorrect. If, according to the state authorities, the late fee remitted by the appellant falls short of any amount as per the Department computation then the appellant is entitled to know for which a show cause notice should have been issued.

Thus, we are fully satisfied that the order of cancellation of the registration made by the state authorities as well as central authorities are unsustainable and the order rejecting the application for revocation dated 06.10.2021 is also not tenable.

For the reasons given hereinabove, the appeal and the connected application are allowed. Consequently, the writ petition stands allowed and the orders impugned in the said writ petition are set aside. The authorities are directed to restore the appellant's certificate of registration under the provisions of both West Bengal Goods & Service Tax Act and Central Goods & Service Tax Act within one week from the date of receipt of the copy of this order. We grant liberty to the authorities to issue show cause notice to the appellant. In case there is any shortfall in remittance of the late fees and interest payable by the appellant and if, according to the appellant, all dues have been settled, they are entitled to submit a reply which shall be considered and a speaking order be passed in accordance with law.

Learned counsel would submit that show cause notice dated 11.09.2021 and the order of rejection of the

application for revocation dated 06.10.2021 are being passed by the central authorities and not by the state authorities as submitted by the appellant. From the e-mail communication sent, it is not clear whether it is the state authorities or the central authorities. In any event, we are convinced that the exercise of jurisdiction of any of the authorities is arbitrary and there is violation of principles of natural justice and the orders are devoid of reasons which would render unsustainable in the eyes of law.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)