

Item no. 04

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 389 of 2022

with

IA No. CAN 1 of 2022

K. Kumar Raja Projects Pvt. Ltd.

vs.

Assistant Commissioner of State Tax Durgapur Circle State Goods
and Service Tax & Ors.

Appearance:

For the Appellants : Mr. Debanuj Basu Thakur

For the Respondents : Mr. A Ray, Ld. Government Pleader
Mr. T.M. Siddiqui
Mr. D. Ghosh

Heard on : 22.04.2022

Judgment on : 22.04.2022

T.S. Sivagnanam J.:

This intra Court appeal is directed against the order dated 9.8.2021 in WPA 5334 of 2021. The appellant had filed the writ petition challenging the order dated 8.11.2019 passed by the respondent cancelling the registration granted in favour of the appellant under the

provisions of CGST Act. The appellant sought for interim order which was not granted by the writ Court and direction was issued to file affidavit-in-opposition by 9th November, 2021 and reply, if any, thereto by 24th November, 2021.

It is submitted by the learned advocate for the appellant that the respondents have not complied with the direction and no affidavit-in-opposition has been filed within time as directed by the Court. The appellant would contend that it is a company engaged in various infrastructure projects and currently has been granted orders for implementing projects with the Airport Authority of India. The appellant would further state that the appellant has a PAN India presence and very recently on account of the orders given by various authorities they commenced business in the State of West Bengal. The appellant made an application for grant of registration under the said Act which was granted and the appellant is said to have been carrying on business and remitting taxes. By proceedings dated 18.11.2019 show cause notice was issued to the appellant as to why the registration should not be cancelled on the ground that they are non-functioning/non-existing at the place of business. The appellant did not respond to the notice. Consequently, the registration was cancelled by order dated 18.11.2019 i.e. the same date on which the show cause notice was issued. Therefore, the appellant had filed an application dated 8.2.2022 for revocation of cancellation of registration which was also rejected on the very same day of 8th February, 2022.

Considering the above facts, we are of the view that the authority committed a grave error in rejecting the application for revocation of cancellation of registration. That apart in the ultimate order dated 18.08.2020 which was put to challenge in the writ petition, we find that there is reference to certain details and data which may not be very germane to decide as to whether the appellant is an existing dealer who is functioning. Prima facie we are of the view that the transactions referred to by the respondent in the order dated 18.08.2020 prima facie shows that the appellant is carrying on business within the State of West Bengal. In any event, we are satisfied that the order rejecting the application for revocation of cancellation of registration is in total violation of principles of natural justice and arbitrary.

Therefore, we **dispose of** this appeal along with the writ application by setting aside the order dated 8.2.2022 by which the application for revocation of cancellation of registration was rejected and the application dated 08.02.2022 is restored to the file of the concerned authority and the appellant shall appear before the authority alongwith all records to prove that they were carrying on business within the State of West Bengal and based on such record after affording an opportunity of personal hearing take a decision on merit and in accordance with law. The decision shall be taken by the authority uninfluenced by the order dated 18.08.2020 passed by the Joint Commissioner of State Tax (GST Appeal). The authority who shall deal with the application for revocation

shall issue notice to the appellant within two weeks from the date of receipt of the server copy of this order calling upon the appellant for appearance and comply with the above direction. Consequently, the writ petition also stands disposed of. Accordingly, the application being CAN 1 of 2022 stands disposed of.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)