

\$~20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7289/2022 & CM No.22349/2022**

PRATIBHA-MOSINZHSTROI CONSORTIUMPetitioner

Through: Mr Rajesh Jain with Mr Virag Tiwari
and Mr Ramashish, Advs.
Mr Anil Mehta, Liquidator with Mr
Ansoo Saurabh (employee of Pratibha
Industries Ltd.)

versus

COMMISSIONER OF CGSTRespondent

Through: Mr Anish Roy, Sr. Standing Counsel
with Mr Kapil Gautam, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

30.08.2022

%

[Physical Hearing/Hybrid Hearing (as per request)]

1. This writ petition is directed against the order dated 22.02.2022 passed by the Joint Commissioner, Central Goods and Service Tax, Appeals-I, Delhi.
2. The impugned order dated 22.02.2022 is the order passed in an appeal, preferred against the order dated 08.12.2021, passed by the proper officer i.e., the Deputy Commissioner Ward 115 (Special Zone) on an application preferred by the petitioner-consortium to revoke the order by which the petitioner-consortium's registration was cancelled.

3. Since the proper officer rejected the revocation application *via* order dated 08.12.2021, the petitioner-consortium preferred an appeal with the Joint Commissioner, Central Goods and Service Tax, Appeals-I, Delhi.

4. It requires to be noticed that the order *via* which the registration was cancelled is dated 06.08.2021. We may also note that the edifice on which the impugned action is based i.e., the action concerning cancellation of registration, is the show cause notice [“SCN”] dated 08.07.2021.

5. The relevant part of the SCN dated 08.07.2021 is appended on page 38 of the case file, which reads as follows:

“Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1 Others

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

You are hereby directed to appear before the undersigned on 14/07/2021 at 04:27 PM.

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 08/07/2021...”

6. A perusal of the aforesaid extract would demonstrate, that practically, no reason was furnished for issuance of the SCN. Although, facially, principles of natural justice were sought to be adhered to by the respondent/revenue, the same stood compromised, as nothing was proposed by way of an action that was intended to be taken against the petitioner-consortium.

7. The record shows that the petitioner, thereafter, filed an application.

8. We have queried Mr Rajesh Jain, who appears for the petitioner-consortium, as to whether any reply was filed.

8.1 Mr Jain says that the reply has not been placed on record, although there is a reference to the reply in the order cancelling the registration i.e., the order dated 06.08.2021.

9. We have perused the order dated 06.08.2021.

9.1 A perusal of the order cancelling the petitioner-consortium's registration shows that there is a reference to a reply dated 17.07.2021 ostensibly submitted by the petitioner-consortium.

10. However, what makes matters worse, insofar as the respondent/revenue is concerned, is that this order does not set out any reason, as to why the registration was cancelled.

11. The reason, perhaps, is that the SCN dated 08.07.2021, as noted above, did not advert to any reason as to why the impugned action was proposed.

12. It appears, that thereupon, and in and about 21.10.2021 the petitioner filed an application for revocation of the cancellation order. It is *qua* this application, that the SCN dated 17.11.2021 was issued; a procedure which is not contemplated under the Central Goods and Services Tax Act, 2017 [in short, the "CGST Act"].

12.1 Be that as it may, this SCN, which was issued pursuant to the petitioner filing an application for revocation of cancellation, *inter alia* sated the following:

“Reason for revocation of cancellation-Others (Please specify)- During PV conducted on 05.07.2021, the unit was found non-existent at registered premises. In the current request for revocation of cancellation he has not submitted any proof/explanation in this regard”

13. Consequently, a reply dated 23.11.2021 to the SCN dated 17.11.2021 was filed by the petitioner-consortium, wherein *inter alia* information was given as to why the petitioner-consortium’s unit was not found in existence at the registered premises.

14. There are two aspects to be noticed at this stage. Firstly, when the earlier SCN was issued, which was on 08.07.2021, nothing of this kind was adverted to in the said SCN i.e., that an inspection had been conducted on 05.07.2021, which revealed that the petitioner-consortium’s unit was not in existence at the registered premises. Secondly, in the reply dated 23.11.2021, the petitioner-consortium had furnished information that it had shifted its place of business to another location. Documents in support of this plea were also appended to the reply.

15. Despite this stand being taken by the petitioner-consortium, order dated 08.12.2021 was passed, rejecting the petitioner-consortium’s application for revocation of cancellation. The order, briefly, sets out the following:

“1. The Principal place of business is non-existent therefore revocation of cancellation may not be granted. As informed during the personal hearing, the principal place of Business has been taken over by the bank and company is under liquidation proceeding.”

16. As is evident from the record, the explanation given by the petitioner consortium, that it had shifted its place of business, was not dealt with in the order dated 08.12.2021.

17. Being aggrieved, the petitioner consortium preferred an appeal. The appeal, as noted above, was disposed of by the Joint Commissioner, Central Goods and Service Tax, Appeals-I, Delhi *via* the order dated 22.02.2022.

17.1 The appellate authority sustained the order cancelling the petitioner-consortium's registration.

18. According to the first appellate authority, the petitioner-consortium had not been able to suffice the cause for revoking the order directing the cancellation of registration.

18.1 That said, what has emerged with the record is, that the lead member of the petitioner-consortium i.e., Pratibha Industries Limited has been ordered to be liquidated by the concerned bench of National Company Law Tribunal [in short "NCLT"] in exercise of powers under Section 33 of the Insolvency and Bankruptcy Code, 2016. This order was passed on 08.02.2021.

19. It is in this context, that on 29.07.2022, we had issued notice to the liquidator i.e., Mr Anil Mehta.

19.1 Mr Anil Mehta has joined the proceedings today, *albeit via* video-conferencing (VC).

20. We are informed by Mr Mehta, that he had delegated his powers, *inter alia*, for contesting this matter to one, Mr Ansoo Saurabh, an officer employed with Pratibha Industries Limited.

21. The record also shows that Mr Ansoo Saurabh has executed *vakalatnama* in favour of Mr Rajesh Jain, Advocate to prosecute the present writ petition.

22. Mr Anish Roy, learned senior standing counsel who appears on behalf of the respondent/revenue says that Mr Mehta could not have delegated the power vested in him in favour of Mr Ansoo Saurabh. Although Mr Mehta contests this position, Mr Rajesh Jain, Advocate says that in order to cut short the controversy, he will request Mr Mehta to directly execute a *vakalatnama* in his favour.

23. Mr Jain has asked for a short accommodation for this purpose.

24. List the matter on 15.09.2022.

25. In the meanwhile, Mr Roy will also take instructions, as to whether the respondent/revenue, in the facts of this case, would like to revisit its position.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

AUGUST 30, 2022

pmc

Click here to check corrigendum, if any