

30.01.2023
Sl. No.1
Mithun

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI

W.P.A. No. 36 of 2023

M/S. DYM Auto World

Versus

**Assistant Commissioner of CGST and Central Excise &
Ors.**

Mr. Jagriti Mishra, Adv.
Mr. Subrata Pal, Adv.
Mr. Unus Ali, Adv.
Mr. Debayan Goswami, Adv.
Mr. Subham Gupta, Adv.
Mr. Reshab Kumar, Adv.

...for the petitioner .

Mr. Ratan Banik, Adv.

...for respondent Nos.1 & 2.

Mr. Subir Kumar Saha, Adv.
Mr. Bikramaditya Ghosh, Adv.

...for the State.

Affidavit of service filed in Court today be kept with
the record.

It is not in dispute that the petitioner was a payee of
GST having GSTIN No.19ANZPD0398J1Z9 in respect of his
proprietor business. He filed GST return for the month of
June, 2020 within the stipulated period of time on 31st
December, 2020.

It is the case of the petitioner that he could not file
GST return within the stipulated period of time thereafter as
he was incurred heavy losses in his business and

consequently had lost his control and even attempted to commit suicide on 27th December, 2020. He was, therefore, admitted to hospital during the whole month of December and for sometimes in the month of January, 2021. As he failed to file return for a continuous period of six months, the petitioner was served with a notice to show-cause as to why his GST registration would not be cancelled on 4th January, 2021. He was directed to appear personally on 4th January, 2021 itself or submit his reply within seven days from the date of service of notice.

It is contended on behalf of the petitioner that due to his physical illness and mental instability as well as loss in business, he could not file return within the stipulated period of time. He also could not file any reply to the show-cause notice. Surprisingly enough, it is stated in the impugned order (Annexure-P4) that the petitioner's reply to the show-cause dated 15th January, 2021 was considered.

Learned Advocate for the respondent in his usual fairness submits that the petitioner did not file any reply to the said show-cause notice and the observations in the order of cancellation of the registration to this effect is wrong. However, the petitioner failed to comply with the specific rules and regulations relating to payment of GST return. Therefore, the petitioner's GST registration was rejected in

accordance with law and remedy lies in filing an appeal before the competent authority.

It is submitted by the learned Advocate for the petitioner that the impugned show-cause notice is bereft of any reason. It has not been stated as to why the petitioner was directed to show-cause notice. Moreover, the impugned order was bad because the petitioner has given the reasonable opportunity of hearing. If the impugned order is passed ex parte without giving opportunity to the petitioner of hearing, it is submitted by the learned Advocate for the petitioner that the petitioner can approach to the Constitutional Writ Jurisdiction of this Court for redressal because there is no disputed question decided by the Superintendent, Jalpaiguri under the GST Act in the impugned order for cancellation of the registration.

In support of his contention, the learned Advocate for the petitioner has referred to some unreported decision as follows:-

1.“ Aggarwal Dyeing and Printing Works Vs. State of Gujarat (SCA No.18860 of 2021) dated 24th February, 2022. Paragraph 11 of the said report is relevant where the Division Bench of the Gujarat High Court was pleased to hold that it is settled legal position of law that reasons are heart and soul of the order and non communication of same itself amounts

to denial of reasonable opportunity of hearing, resulting in miscarriage of justice. This Court is bound by the said judgments hereinafter referred to. The necessity of giving reason by a body or authority in support of its decision came for consideration before the Supreme Court in several cases. Initially, the Supreme Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of the Supreme Court. In **coming to such** observation the Division Bench relied on the celebrated decision of the Hon'ble Supreme Court in *A.K.Kraipak Vs. Union of India reported in (1970) 1 SCR 45*.

He also refers to another decision of the High Court of Madras passed in branch of writ petitions bearing No. WP25048 of 2021 and others on 31st January, 2022. In the said judgment it is observed by the Madras High Court that the provisions of the GST Enactments and Rules made thereunder read with various clarifications issued by the Central Government pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear, intention is to only facilitate and not to debar and de-recognised assesses from coming back into the GST fold."

This Court asks this question to itself that by way of cancellation of GST who suffers most. The reply shall be the Union of India and the State Government.

On factual score it is found that the petitioner was not given opportunity of hearing. The petitioner was under tremendous mental stress at that point of time for which he tried to commit suicide. The extent of his mental stress and physical illness is amply demonstrated in the documents filed by the petitioner with the instant writ petition.

In view of the above discussion, this Court holds that the petitioner should be given an opportunity of hearing. But in order to avail of such opportunity, the petitioner shall first make payment of up to date GST with statutory interest and penalty within three weeks from the date.

On acceptance of such amount as mentioned above, the competent authority, i.e. respondent Nos.1 and 2 shall revive GST number of the petitioner within one week thereafter.

As the GST number is cancelled at present, the petitioner shall be provided by respondent Nos.1 and 2 the bank details where he can file the pending GST with interest and fine within the stipulated period of time.

After receipt of the tax as stated above and revivable of GST number, the petitioner shall file the return for unpaid period in accordance with law.

(Bibek Chaudhuri, J.)