

Item No.7.

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

HEARD ON: 22.09.2022

DELIVERED ON:22.09.2022

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SUPRATIM BHATTACHARYA**

**M.A.T. No.791 of 2022
With
I.A. No.CAN 1 of 2022**

Swarupa Ghosh.

Vs.

The Assistant Commissioner of State Tax, Bowbazar Charge & Ors.

Appearance:-

**Mr. Saurabh Sankar Sengupta,
Mr. Indranil Biswas**

..... for the appellant.

**Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. V. Kothari**

... for the State.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. Certified copy of the impugned order dated 11th May, 2022 filed by Mr. Sengupta, learned Advocate for the appellant, is placed on record.

2. This intra Court appeal is directed against the order dated 11th May, 2022 passed in W.P.A. No.7816 of 2022. By the said order, the writ petition filed by the appellant challenging the rejection of the revocation application dated 21st March, 2022 and all other earlier proceedings were dismissed on the ground that an appellate remedy is available under the Act. Being aggrieved by such order, the appellant is before us by way of filing this appeal.

3. We have heard Mr. Saurabh Sankar Sengupta, learned counsel appearing for the appellant and Mr. Debasish Ghosh, learned Advocate for the State.

4. The case had a chequered history commencing from August, 2021 when the first show cause notice was issued on 23rd August, 2021 proposing to cancel the registration on the ground that there is a contravention of Section 29(12)(a) of the West Bengal Goods and Services Tax Act, 2017 (for short, "the Act"). The appellant / petitioner submitted her reply and thereafter an order of cancellation was passed on 1st September, 2021, which, according to the appellant, was devoid of reasons. The appellant filed an application for revocation of the said order and by an order dated 3rd November, 2021, the registration was restored. At that point of time, the appellant proposed to shift his place of business and therefore, submitted an application on 3rd November, 2021 for cancellation of the registration. Various documents were sought for by the department. However, by order dated 25th November, 2021, the authority rejected the application filed by the appellant for cancellation of registration as balance sheet and profit and loss account was not submitted as per the notice. On the same date, i.e. on 25th November, 2021, the second notice for

cancellation of the registration was issued on the allegation that the appellant had obtained registration by means of fraud and willful misstatement or suppression of facts. However, no adverse report was appended to the said show cause notice.

5. The appellant submitted her reply on 2nd December, 2021 requesting that the necessary documents should be provided to the appellant to enable her to submit her appropriate rebuttal. Therefore, the appellant had also submitted written submissions on 2nd December, 2021 to the same effect. On the hearing fixed on 7th December, 2021, the appellant appeared but the authority failed to provide any document; however, dropped the proceedings for cancellation of registration. Thereafter, the appellant filed the application for cancellation of the registration, which was the second attempt made by the appellant. The authority issued show cause notice calling upon the appellant to provide various details. Written submissions were made to the said show cause notice on 13th December, 2021 and on 20th December, 2021, the registration was cancelled.

6. According to the appellant, the said order of cancellation was passed in the midnight. Thereafter on 21st December, 2021 once again, during the midnight, the appellant received another show cause notice for cancellation of registration for contravention of Section 29(2)(a) of the Act.

7. The appellant would state that though the said notice states an adverse report is separately attached, but no attachment was there to the said notice. This was pointed out by the appellant by representation dated 27th December, 2021. Thereafter, on 28th December, 2021, an adverse report was received and the appellant sent an email at 2.47 p.m. requesting for time to submit reply. Thereafter, without affording any opportunity, the registration was cancelled on the very same date, i.e., on 28th December, 2021.

8. The appellant filed an application for revocation of such an order on 17th January, 2022. Thereafter, a show cause notice was issued on 16th February, 2022 for which a detailed reply was submitted by the appellant on 19th February, 2022. However, the said application was rejected by an order dated 21st March, 2022.

According to the appellant, the reasons stated therein was that the order has been passed without taking into consideration any of the grounds raised by the appellant and without adequate opportunity. This order dated 21st March, 2022 and the earlier orders including the show cause notices were impugned in the writ petition. The learned Single Bench had dismissed the writ petition on the ground of availability of alternative remedy.

9. Upon perusal of the materials placed before us in this appeal, we find that the order passed by the authority cancelling the application for revocation is devoid of reasons. None of the grounds raised by the appellant has been dealt with. It is not clear as to why the department has been dragging the appellant for such a long period, i.e. from August, 2021. If, according to the respondent, there is any adverse material, then a proper show cause notice should have been given to the appellant and her objection should have been invited and further affording an opportunity of personal hearing, a speaking order should have been passed.

10. It is high time that the Commissioner of Commercial Taxes takes note of the manner in which the subordinate officers have been dealing with cases, more particularly matters concerning cancellation of registration and it would augur well to conduct an orientation programme to enable the officers to be sensitized as to how and on what manner the proceedings should be initiated and how it should be dealt with and how speaking order should be passed. Since the enactment under which they are functioning is a new enactment, the officers are required to be sensitized on this issue, for which purpose a copy of this order shall be placed before the Commissioner of Commercial Taxes, West Bengal by the learned Government counsel appearing for the respondents.

11. As we are satisfied that in the instant case there has been total violation of principles of natural justice, the order of rejection of the revocation application is a non-speaking order without considering the vital facts, the Court is inclined to set aside such an order.

12. For the above reasons, the appeal is allowed. Consequently, the order passed in the writ petition is set aside and the writ petition is allowed and the order of rejection of the application for revocation dated 21st March, 2021 is set aside and the matter is remanded to the original authority.

13. The original authority is directed to issue a comprehensive show cause notice to the appellant clearly mentioning as to what is the allegation against the appellant. The allegations so made in the show cause notice should be duly supported by documents or other evidence or material, copies of which should be appended along with the show cause notice. The appellant should be granted not less than 15 days' time to submit her reply.

14. Thereafter, the authority shall afford an opportunity of personal hearing to the appellant or her authorised representative, hear the submissions and take note of the documents and other details, which the appellant may furnish and thereafter proceed to pass a speaking order on merit and in accordance with law. Such an order shall be passed not later

than 10 days from the date on which the personal hearing is concluded.

15. With the above directions, the appeal and the connected application being CAN 1 of 2022 are disposed of.

16. No order as to costs.

17. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(SUPRATIM BHATTACHARYA, J.)

NAREN/PALLAB(AR.C)