Form No. J(2)
Daily List Item No. 36
Court No. 2
b.r.

CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI
APPELLATE SIDE

Present:-
The Hon'ble Justice Aniruddha Roy

WPA 1737 of 2025

Dinesh Biswas
-vs-
The State of West Bengal & Ors.

For the petitioner : **Mr. Bikramaditya Ghosh**
Mr. Rajiv Parik
Ms. Supriya Singh
Mr. Ved Rai
Mr. Mayank Bhandari
Mr. Vivek Saha

For the State : **Mr. Pretom Das**
Mr. Rima Sarkar

Heard On : **02.09.2025**

Judgement on : **02.09.2025**

Aniruddha Roy,J. :

Affidavit of service filed in Court today, is taken on record.

Facts:

1. Through this writ petition, the petitioner has challenged the impugned cancellation of GST registration dated **March 26, 2025,**

annexure p-3 at page 17 to the writ petition. The observation of the GST authority form the said impugned order is quoted below :-

> "This has reference to show cause notice issued dated 05/07/2023.
>
> Whereas no reply to the show cause notice has been submitted, and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reasons(s):
>
> 1. Others
>
> Remarks :
>
> Section 29(2)(c)- Person, other than paying tax u/s 10, failed to furnish returns for prescribed periods. The effective date of cancellation of your registration is 01/12/2022.
>
> 2. Kindly refer to the supportive document(s) attached for case specific details. - Not Applicable
> 3. It may be noted that a registered person furnishing return under sub-section (1) of section 39 of the CGST Act, 2017 is required to furnish a final return in FORM GSTR-10 within three months of the date of this order.
> 4. Your are required to furnish all your pending returns.
> 5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation."

2. From the observations made in the impugned order, it appears that initially there was a show cause notice issued upon the petitioner and no reply was submitted by the petitioner in response to the said show cause notice. The observations further show that there were certain procedural irregularities on the part of the petitioner for which the GST registration was cancelled.

3. Mr. Bikramaditya Ghosh, learned counsel appearing for the petitioner, in his usual fairness submits that there is an appellate provision under **Section 107 of the Central Goods and Services Tax Act, 2017 (for short, the said 2017 Act.)**. No appeal has been preferred.

4. With the passage of time, the statutory period of preferring the appeal stands expired including the grace period as provided under the statute.

5. Mr. Ghosh further submits that unless the said GST registration is restored, the petitioner will not be able to carry his business and as a result shall suffer immense prejudice and shall be deprived of his livelihood. He further submits that the petitioner is agreeable to comply with all the procedural requirements which are necessary for restoration of the GST registration.

6. Mr. Ghosh further submits that in the event the GST registration is restored after making necessary statutory payments and if thereafter the petitioner is allowed to carry out the business, it would generate further revenue out of which the petitioner will also be able to pay the revenue authority the necessary levies in due process of law and ultimately the revenue authority shall be benefitted and the State will earn the exchequers. By keeping this GST registration cancelled, the revenue will not earn any benefit.

7. In support of the above contention, learned counsel for the petitioner has referred the following decisions:-

(i) The decision of the **Hon'ble Division Bench dated April 9, 2024**, ***In the matter of: Subhankar Golder –vs Assistant Commissioner of State Tax. Serampore Charge & Ors*. *rendered in MAT 639 of 2024*** and

(ii) a decision of the Co-ordinate Bench dated **July 29, 2025**, ***In the matter of : Marjina Khatun C/o. Anarun Islam Sarkar –vs- Union of India & Ors. rendered in WPA 1542 of 2025.***

8. In the light of the above, Mr. Ghosh prays for quashing of the said impugned dated **March 26, 2025 at page 17** to the writ petition and further prays for restoration of the GST registration in favour of the petitioner.

9. Learned State counsel, Mr. Pretom Das with Ms. Rima Sarkar, learned advocate submit that an alternative remedy is available under the statute and the petitioner should have approached the appellate forum.

<u>Decision</u>:

10. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, the time to file statutory appeal including the grace period as provided under the statute stands expired. The impugned order cancelling of registration of the petitioner shows that there were some procedural non-compliance on the part of the petitioner leading to cancellation

of the registration. These procedural non-compliance are curable. The law is well settled that substantive justice and right shall not suffer for procedural non-compliance of some formalities.

11. The Hon'ble Division Bench, ***In the matter of : Subhankar Golder (supra)*** had observed as under:-

> *"3. After elaborately hearing learned counsel for the respective parties, we are of the view that the appellant can be provided with one more opportunity to remedy the bridge as the appellant being an individual since a small retailer of imitation jewellery, we deem it appropriate that the appellant should be permitted to remedy the bridge.*
> *4. Accordingly, the appeal, the connected application and the writ petition all are allowed and the order of cancellation of registration is set aside subject to the condition that the appellant files returns for the entire period of default, pays requisite amount of tax and interest and fine and penalty. If the appellant complies with the directions passed within a period of three weeks from the date of receipt of the server copy of this order, the appellant's registration under the Act shall be restored by the Jurisdictional Officer. However, if the appellant fails to comply with the directions, the benefit of this order would not enure to the appellant and the writ petition would stand automatically dismissed."*

12. The Co-ordinate Bench, ***In the matter of: Marjina Khatun C/o. Anarul Islam Sarkar (supra)*** had observed as under:

> *"5) This Court is required to take into consideration the nature of order passed by the adjudicating authority dated 31st July, 2024 leading to cancellation of GST registration of the petitioner which in effect will not prejudice revenue earning of the respondent authorities in the event registration certificate is revived.*
> *6) Placing reliance on* ***Subhankar Golder*** *(supra) and* ***Tvl. Suguna Cutpiece Centre*** *(supra), Court finds that the petitioner can be given one more opportunity to take steps for filing return within the specified time.*
> *Considering the above, this Court is also of the considered opinion that the cancellation of the GST registration of the petitioner on the procedural ground would not enure in the benefit either to the revenue authority, the petitioner. On the contrary. If the GST*

certificate stands restored and the petitioner is allowed to carry on its business the State can earn revenue and to the till of the order exchequer”

13. Considering the above, this Court is of the considered opinion that, the cancellation of GST registration of the petitioner on the procedural ground would not enure any benefit either to the revenue authority or to the petitioner. On the contrary, if the GST certificate stands restored and the petitioner is allowed to carry on its business, the State can earn revenue to the till of the public exchequer.

14. Existence of alternative remedy is not an absolute bar to entertain a writ petition by this Constitutional Court in exercise of its jurisdiction under Article 226 of the Constitution of India but is a self-imposed restraint. Alternative remedy does not make a writ petition to be not maintainable but the same may not be entertained by a writ court depending upon the facts and circumstances of the case. Each case differs from other on facts. There is no fixed and straight jacket formula and the same depends on the facts of each case. While exercising power under Article 226 of the Constitution of India, this Constitutional Court also exercises its equitable jurisdiction.

15. In the facts and circumstances of the instant case, the statutory period for preferring an appeal from the impugned order, including the grace period as provided under the statute has expired. Due to the cancellation of the GST registration, the entire business of the petitioner has been stopped. The impugned order shows that due to non-compliance of some procedural requirements, the registration was

cancelled. Considering the facts and circumstances in this case, this writ petition is entertained.

16. In view of the foregoing reasons and discussions, **the impugned order of cancellation of registration dated March 26, 2025 annexure p-3 at page 17** stands set aside and quashed.

17. The petitioner shall file return for the entire period of default and pay the requisite amount of tax, interest, fine and penalty within a period **4 weeks** from date strictly in accordance with law.

18. In the event return is filed along with necessary payment as directed above¸ the GST registration of the petitioner shall forthwith be **restored** with all its consequential effect in accordance with law.

18. In the event, the petitioner defaults in submitting the return and to make the necessary payment within the time mentioned above, the benefit of this order shall not be extended to the petitioner after expiry of the said period and the writ petition would be treated and would stand automatically dismissed without any reference to this Court.

19. In order to grant opportunity to the petitioner, to take steps in terms of the direction made herein, the concerned GST authorities are directed to open the portal for the petitioner to enable the petitioner to file the return for the entire period of default along with all tax, interest, fine and penalty in accordance with law.

20. Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

21. With the above observations and directions this writ petition, ***WPA 1737 of 2025*** stands ***disposed of*** without any order as to costs.

22. The parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)