

(2025) 02 CAL CK 1074
In the Calcutta High Court, Original Side
Case No : WPA 30825 Of 2024

Md. Firoz

APPELLANT

Vs

Assistant Commissioner, Bally Salkia Ors

RESPONDENT

Date of Decision : 17-02-2025

Acts Referred:

Central Goods and Services Tax Act, 2017 — Section 29(2)(e), 107

Citation : (2025) 02 CAL CK 1074

Hon'ble Judges : Raja Basu Chowdhury, J

Bench : Single Bench

Advocate : Rita Mukherjee, Abhijit Das, Aratrika Roy, Anirban Ray, Md. T. M. Siddiqui, Wasym Ahamed, Tanoy Chakraborty, Saptak Sanyal, D. Dinda

Final Decision : Dismissed

Judgement

Raja Basu Chowdhury, J

1. Affidavit of service filed today is taken on record.
2. Challenging the order dated 07th August, 2023, cancelling the registration of the petitioner under the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act) as also the order dated 5th September, 2024 passed by the appellate authority under the provisions of Section 107 of the said Act refusing to interfere with the order of cancellation of registration, the instant writ petition has been filed.
3. The petitioner had obtained the registration under the said Act and claims to be carrying on business from a shop room situated at 6/1, Ashutosh Mukherjee Lane, P.S.- Golabari, Howrah-711 106 on the basis of an agreement for leave and licence entered by and between the petitioner and one Tarak Nath Pandey on 11th October, 2018. Subsequently, on 11th February, 2023, the petitioner filed an amendment application for amending his place of business and for incorporating a new place of business in the registration certificate. Although, the respondents had issued Form GST REG-03 seeking additional information/

clarification from the petitioner, however, upon receipt of the reply by order dated 20th March, 2023 issued in FORM GST REG-05 had rejected the petitioner's application for amendment of the place of business.

4. Subsequently, on 19th July, 2023, a show cause notice was issued proposing cancellation of registration on the ground that the registration had been obtained by fraud/willful mis-statement or suppression of material facts as enumerated in Section 29(2)(e) of the said Act. The petitioner did not furnish any reply and ultimately the order of cancellation of registration was issued on 7th August, 2023 on the ground that the petitioner never existed at 6/1, Ashutosh Mukherjee Lane, Golabari, Howrah-711 106 and that the petitioner had taken a new registration on the basis of incorrect and false representation and suppression of material facts in respect of the declared place of business and occupancy of the place of business.

5. Being aggrieved, an appeal was filed before the appellate authority in Form GST APL-01. The appellate authority, however, by an order dated 5th September, 2024 issued in Form GST APL-04 had disposed of the said appeal by refusing to interfere with the order passed by the Proper Officer.

6. Ms. Mukherjee, learned counsel appearing for the petitioner by drawing attention of this Court to the show cause notice and to the order of cancellation of registration dated 7th August, 2023 would submit that despite noting that the document uploaded by the petitioner were not retrievable from the portal, the Proper Officer had mechanically passed the said order. From the aforesaid order it would transpire that the Proper Officer could not retrieve the uploaded rent/leased agreement and the municipal khata copy from the portal, notwithstanding the aforesaid and in the most mechanical manner, he had cancelled the petitioner's registration. Ms. Mukherjee would submit that the appellate authority also did not appropriately consider the documents relied upon by the petitioner. Although, the petitioner had disclosed the leave and licence agreement and the electricity bills, including the municipal records, the appellate authority had brushed aside such vital piece of evidence by observing that the electricity bills do not prove ownership of the property though electricity bills were in the name of the petitioner's licensor. She would also submit that the petitioner was not obliged to prove the ownership of his licensor, what were relevant, was the factum of proof of the leave and licence agreement which the petitioner did. She would also submit that the Municipal Corporation records relied upon by the petitioner had also not been dealt with at all by the appellate authority. The order passed by the appellate authority is perverse and should be set aside.

7. Mr. T. M. Siddiqui, learned senior advocate and Additional Government Pleader representing the State would submit that the petitioner was given opportunity to show cause as to why his registration under the said Act shall not be cancelled. The petitioner chose not to respond to the same. The Proper Officer by a detailed order dated 7th August, 2023 cancelled the petitioner's registration by noting that the registered tax payer (RTP) does not exist or had never existed at 6/1,

Ashutosh Mukherjee Lane, Golabari, Howrah-711 106 and had taken the new registration on the basis of incorrect/false representation and suppression of materials facts and consequently the registration was cancelled on the grounds provided in Section 29(2)(e) of the said Act. Although, an appeal was preferred, the petitioner did not appear before the appellate authority and the appellate authority in the facts noted hereinabove had rightly rejected the appeal. As such no interference is called for.

8. Heard learned counsel for the respective parties and considered the materials on record.

9. Record would reveal that on the basis of information received, the Bureau of Investigation, South Bengal Headquarter to test out the bona fide and the existence of business activity of the petitioner run under the legal name "Md. Firoz" and trade name "Domain Enterprises", conducted a field enquiry on 18th July, 2023. On the basis of the field enquiry, it was found that the premises no. 6/1, Ashutosh Mukherjee Lane, Golabari, Howrah-711 106 is a five storied (G+4) Building and is used for residential purpose only, except one room which is used for commercial purpose. The said room was found to be locked with collapsible gate and shutter at the time of visit. The officers of the Bureau of Investigation could not identify any name plate or any letter box in the name of "Domain Enterprises" or "Md. Firoz" at the time of visit. They had, however, gathered information from the inhabitants of the above building that the room used for commercial purpose belongs to Sudama Jaiswal and he had rented it to someone else which is now being used for trading of "readymade garments". Although, the officers of the Bureau tried to establish contact with the RTP on his mobile number uploaded in the GST Portal by the RTP at the time of applying for registration, unfortunately, they could not establish contact with the RTP on that number. Proceeding on such premise, the Proper Officer had concluded as follows:

"1) The RTP does not exist or has never existed at 6/1, Ashutosh Mukherjee Lane, Golabari, Howrah-711 106.

2) The RTP has taken New Registration to GST on the basis of incorrect/false representations and/or suppression of materials facts in respect of the declared place of business and lawful occupancy over the place of business."

10. Although an appeal had been preferred from the aforesaid order, the petitioner did not challenge the contents of the report of the Bureau of Investigation as recorded in the order and the observations of the proper officer. On the contrary, it is the case of the petitioner that after the petitioner had applied for amendment of the place of registration, the petitioner had been carrying on business from 153, A.P.C. Road, Kolkata. I, however, find that the main thrust of argument of Ms. Mukherjee is directed against the non-consideration of the documents relied upon by the petitioner. It is true that the petitioner had relied upon the electricity bills issued in the name of Tarak Nath Pandey as also the leave and licence agreement. I may note that the leave and

licence agreement dated 12th October, 2018 was valid for a period of 11 months. No attempt has been made by the petitioner to establish the factum payment of licence fee of Rs. One thousand per month to the said Tarak Nath Pandey. No attempt has also been made to demonstrate that the petitioner had been making payment of electricity charges to the said Tarak Nath Pandey for occupying the room in question in terms of the leave and licence agreement. The certificate of enlistment issued in favour of the petitioner for the assessment year 2018-2019 and 2019-2020, though cannot be doubted which was available upto 31th March, 2020, however, at the same time, one cannot lose sight of the fact that the petitioner had not challenged the observations as regards the spot visit by the Bureau of Investigation. No attempt was made by the petitioner to respond to the show cause or to appear before the appellate authority. Having regard thereto, I am of the view that the inference drawn by the Proper Officer in the facts of the case appears to be plausible one. The above order does not appear to be one which is based on no evidence or can be said to be perverse. As such no interference is called for.

11. The writ petition fails and is hereby dismissed, however, with no order as to costs.

12. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.