

(2022) 09 DEL CK 0121

In the Delhi High Court

Case No : Civil Writ Petition No. 7289 Of 2022, Civil Miscellaneous Application
No. 22349 Of 2022

Pratibha-Mosinzhstroi Consortium

APPELLANT

Vs

Commissioner Of CGST

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Central Goods And Services Tax Rules, 2017 — Rule 25
Insolvency And Bankruptcy Code, 2016 — Section 33

Citation : (2022) 09 DEL CK 0121

Hon'ble Judges : Rajiv Shakdher, J;Tara Vitasta Ganju, J

Bench : Division Bench

Advocate : Rajesh Jain, Virag Tiwari, Anish Roy

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. The petitioner has sought the following substantial reliefs:

"a) quash and set aside the impugned order dated 22.02.2022 passed by the Jt. Comnr.;

b) quash and set aside the order of cancellation of RC dated 06.08.2021 and the order of rejection of revocation application dated 08.12.2021 be also set aside;

c) restore the RC of the petitioner with immediate effect;

d) issue a Writ of Mandamus or any other Writ, order or direction."

2. Notice in this writ petition was issued on 10.05.2022, after hearing the matter substantially.

2.1 It is a matter of record, that at that juncture, the respondent/revenue was represented by its senior standing counsel i.e., Mr Harpreet Singh.

2.2 Since then, counter-affidavit has been filed on behalf of the respondent/revenue.

3. Arguments in the matter were heard, once again, on 30.08.2022, when the following had been recorded by us:

"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 [sic: to show sufficient 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 videoconferencing (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.”

4. As would be evident from the extracts of the proceedings held on 30.08.2022, we had asked Mr Rajesh Jain, who appears for the petitioner, as to whether the vakalatnama had been executed in his favor by the liquidator appointed by the NCLT.

4.1 Mr Jain has answered in the affirmative.

4.2 We have examined the record.

4.3 The vakalatnama executed by Mr Anil Mehta, Liquidator (Pratibha Industries Ltd) [“PIL”] in favor of Mr Jain, is on the Court record.

5. Insofar as the other part of the directions is concerned, which is that we had asked Mr Anish Roy to take instructions, as to whether the respondent/revenue would like to revisit its position, Mr Roy says that the respondent/revenue will reexamine the issue, as to the existence of Pratibha Industries Ltd., in the backdrop of the information contained in the appeal filed before the Joint Commissioner, Central Goods and Service Tax, Appeals-I, Delhi i.e., the Appellate Authority.

6. A perusal of the extracts of the order dated 30.08.2022 would show, that the following is not in dispute:

(i) In the show-cause notice [“SCN”] issued to the petitioner on 08.07.2021, no reasons were furnished.

(ii) A subsequent SCN was issued on 17.11.2021, whereby, the petitioner-consortium, for the first time, came to know that the respondent/revenue had cancelled the registration, on the ground that PIL was found not to be in existence, when inspection was carried out on 05.07.2021.

(iii) This aspect of the matter, that is, an inspection was carried out on 05.07.2021 was not put to the petitioner-consortium, when SCN dated 08.07.2021 was issued.

(iv) Although the petitioner-consortium claims, that it had submitted a reply dated 23.11.2021; evidently, the same was not uploaded on the designated portal. It is Mr Jain’s contention though, that the reply was uploaded on the website of the respondent/revenue.

(v) That in the appeal preferred by the petitioner, information was submitted, which alluded to the fact that PIL had relocated itself. In the impugned order dated 22.02.2022 passed by the Joint Commissioner, CGST-I, Delhi there was no discussion with regard to assertions made in that behalf by the petitioner-consortium.

7. Given these facets, we are of the view, that the impugned order cannot be sustained for the following reasons.

(i) Firstly, the SCN dated 08.07.2021 gave no clue whatsoever, as to what was the infraction committed by the petitioner-consortium, and hence the case/allegation it had to meet.

(ii) Secondly, although inspection of PIL's premises was carried out on 05.07.2021, it did not find mention in the SCN dated 08.07.2021. Besides this, no notice of physical inspection was given. The concerned authority, having exercised this option under Rule 25 of the CGST Rules, 2017, it had to give notice. [See judgement dated 26.04.2022, passed in W.P (C) 8451/2021, titled Micro Focus Software Solutions India Pvt Ltd. vs. Union of India & Anr; judgement dated 26.08.2022, passed in W.P (C) 10408/2022, titled Curil Tradex Pvt. Ltd. vs The Commissioner, Delhi Goods and Service Tax & Anr.]

(iii) Thirdly, another SCN dated 17.11.2021 was issued, which is not contemplated under the CGST Act, 2017 [in short "Act"].

(iv) Fourthly, the order dated 22.02.2022 passed by the Joint Commissioner, Central Goods and Service Tax, Appeals-I, Delhi is bereft of reasons. The order does not deal with the information given by PIL as regards its relocation.

7.1 In sum, the entire proceedings, right up to the stage of passing of the order-in-appeal was legally flawed. Accordingly, the impugned order is set aside.

8. Liberty is, however, given to the respondent/revenue, to issue a fresh SCN, if deemed necessary, with regard to the registration certificate, issued under the Act.

8.1 However, in the meanwhile, the registration of the petitioner shall be restored.

9. Furthermore, on account of the hiatus created due to the cancellation of registration of the petitioner-consortium, we are told by Mr Jain, that the petitioner-consortium could not file returns.

9.1 Mr Jain says, that the last return was filed in August, 2021.

10. Having regard to the aforesaid, further four weeks are granted to the petitioner-consortium to file the returns, for the relevant period.

10.1 It goes without saying, that for the petitioner-consortium to file the returns, the designated portal concerning the petitioner-consortium will have to be activated.

10.2 The respondent/revenue will do so, within forty eight hours of the receipt of a copy of the instant judgment.

11. Given the circumstances in which the petitioner was placed, on account of the actions of the respondent/revenue, no interest or penalty will be levied on account of delay in filing the pending returns.

11.1 However, this window will remain open for the petitioner-consortium only

for four (4) weeks, which will run from the date of receipt of a copy of the judgment.

12. The writ petition is disposed of in the aforesaid terms.

13. Consequently, pending application also stand closed.

14. Parties will act based on the digitally signed copy of the order.