

Item No.1.

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

HEARD ON: 22.12.2022

DELIVERED ON:22.12.2022

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T No.1828 of 2022
with
I.A. No.CAN 1 of 2022**

M/s. Modicum Enterprise (OPC) Private Limited.

Vs.

**Deputy Commissioner of State Tax/Assistant Commissioner of State Tax,
Shibpur Charge & Ors.**

Appearance:-

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

...

for the appellant.

Ms. Sanjukta Gupta

....

for the Union of India.

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

..

for the State / respondents.

JUDGMENT

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

1. This intra-Court appeal by the writ petitioner is directed against the order dated 28th September, 2022 passed in W.P.A. 21708 of 2022 by which the learned Single Judge declined to grant interim order. Aggrieved by the same, the appellant is before us by way of this appeal.

2. We have heard Mr. Saurabh Sankar Sengupta, learned Advocate appearing for the appellant, Mr. Debasish Ghosh, learned standing counsel for the respondents/State and Ms. Sanjunkta Gupta, learned standing counsel for the Union of India.

3. The appellant was a registered dealer under the provisions of the Central Goods and Services Tax Act, 2017 (for short, "the Act") and the rules framed thereunder. The registration was cancelled on the ground that the appellant was a non-existing dealer. Aggrieved by the same, the appellant / writ petitioner preferred the appeal before the Senior Joint Commissioner of

State Tax, Howrah Circle and by an order dated 22nd July, 2022, the appeal was allowed and a clear finding has been rendered by the appellate authority that the ground on which the cancellation was made, was incorrect. Consequent upon the order passed by the appellate authority, the cancellation of the registration was revoked by an order dated 27th January, 2020 and the registration was restored. When the appellant attempted to file his returns, there is a demand of Rs.5,000/- per return stating that it is late fee payable under Section 47 of the Act. Section 47 of the Act would be relevant for the case on hand, which reads as follows:-

47. Levy of late fee.- (1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount

calculated at a quarter per cent of his turnover in the State or Union territory.

4. In terms of the sub-Section (1), any registered person, who fails to furnish return by the due date shall pay late fee of 100 rupees everyday during which such failure continues subject to a maximum amount of Rs.5,000/-. Sub-Section (2) states that any registered person, who fails to furnish the return required under Section 44 is also required to pay such late fee.

5. The question would be whether the late fee can be demanded from the appellant. Admittedly, the provision deals with a person, who fails to furnish the returns either under Section 39 or Section 45 or Section 44. In the instant case, the revenue does not state that the appellant failed to furnish its return within the due date. The reason for non-furnishing the return is cancellation of the registration on the ground that the appellant is a non-existing dealer.

6. This order was set aside by the appellate authority holding that the order was passed on a factually incorrect premise. If that be so, the appellant cannot be penalised by

demanding late fee. In the facts and circumstances of the case, Section 47 does not stand attracted.

7. Therefore, we are of the view that the demand of late fee from the appellant @ Rs.5,000/- per return is without jurisdiction and not tenable in the eye of law. It is pointed out by the learned Advocate appearing for the official respondents that unless appropriate direction is given to the concerned respondent, the appellant will not be able to electronically file its return. In the light of the above, the following directions are issued.

8. This appeal and the connected application as well as the writ petition are disposed of by restraining the respondents from demanding any late fee from the appellant in respect of the returns, which they intend to file and to facilitate the process of filing the return, the nodal officer in the Goods and Services Tax Help Desk, Kolkata is directed to render necessary assistance so that the appellant will be able to file the return without the payment of late fee. This direction shall be complied with within a period of three weeks from the date of receipt of the server copy of this order.

9. Needless to state that on the ground of non-filing of the return, the respondent should not initiate fresh proceeding for cancellation of the registration.

10. There shall be no order as to costs.

11. 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,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)