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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 26.04.2022

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W.P.(C) 8451/2021, CM Nos.26176/2021 & 28634/2021

MICRO FOCUS SOFTWARE SOLUTIONS

INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr Harish Bindumadhavan and Mr
Ashwini Chandrasekharan, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr Manoj Kumar Tyagi, Sr. Panel
Counsel for UOI/R-1.
Mr Sameer Vashisht, ASC, GNCTD
with Ms Sanjana Nangia, Adv. for
R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE POONAM A. BAMBA

[Physical Court Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This writ petition is directed against the orders dated 09.12.2020 and 18.02.2021 passed by respondent no.2.
2. The first order dated 09.12.2020 concerns cancellation of GST registration while second order i.e., the order dated 18.02.2021, relates to the dismissal of the application for revocation of cancellation.
3. The facts which are required to be noticed, with regard to the challenge laid by the petitioner to the aforementioned orders, are briefly the following:
 - 3.1. The petitioner was issued a show cause notice dated 11.11.2020. Via this notice, the petitioner was called upon to show cause as to the factum of it not being found functioning or existing at the given address.

3.2. To respond to the aforesaid show cause notice, the petitioner was given seven working days. The show cause notice also provided that the authorized representative of the petitioner will appear for personal hearing on 16.11.2020 at 11:00 am.

3.3. The petitioner responded to the same *via* the reply dated 12.11.2020. *Via* the said communication, the petitioner sought extension of time for personal hearing to 23.11.2020.

3.4. We may add here that since seven working days were given *via* the show cause notice dated 11.11.2020, according to the petitioner, the seventh working day would terminate only on 23.11.2020.

4. Accordingly, on 23.11.2020, a reply was filed wherein the following reasons were furnished by the petitioner, as to why it wished to continue with its registration. For the sake of convenience, the relevant part of the said reply is extracted hereafter:

“In relation to the notice, the company submits the following:

- 1. The company was operating from its registered place of business located at D41, 1st Floor, Near BSES Office, Next to Dwarka Mode, Shyam Vihar, Phase 1, New Delhi - 110043 till November 2019 (copy of lease agreement enclosed as **Annexure-1**).*
- 2. From December 2019 month onwards, the company discontinued its business operations at Delhi and therefore, had not renewed the lease agreement.*
- 3. However, the company did not apply for cancellation of GST registration on grounds of practical business challenges viz.*
 - a. Issuance of credit notes during FY 2020-21 against supplies made upto December 2019;*
 - b. Amendment of incorrect particulars inadvertently reported in GST returns filed during FY 2019-20 (Since GST law allows reporting/rectification of error or omission till September month of the next financial year);*

- c. *Furnishing of Form GSTR-9 and GSTR-9C for FY 2017-18/2018-19 on account of extended due dates;*
- d. *Filing of refund claims.*

4. *The company is in the process of preparing and filing Form GSTR-9 and GSTR-9C for FY 2018-19 which is due for filing by 31 December 2020 and would apply for cancellation of registration suo-moto post filing of GSTR-9 and GSTR-9C for FY 2018-19 and furnishing of refund claim against excess payment of tax made during FY 2018-19.*

In light of above, we assure your kind authority that we will suo-motu apply for cancellation of registration at the earliest post furnishing of annual returns within the stipulated due dates. ...”

5. What followed thereafter was the first impugned order, which as noticed above, is dated 09.12.2020.

5.1 It is thereafter that the petitioner filed an application for revocation on 22.12.2020. As noticed above, this application was rejected by respondent no.2 via order dated 18.02.2021.

6. Mr Harish Bindumadhavan, who appears on behalf of the petitioner, says that there has been a complete violation of principles of natural justice.

6.1. It is submitted that as per Rule 25 of the Central Goods & Service Tax Rules, 2017 [in short ‘2017 Rules’], before carrying out physical inspection, notice had to be given to the petitioner. However, according to him, notice was not given.

6.2. It is Mr Bindumadhavan’s submission that the petitioner was furnished the report generated on physical inspection having been carried out, only during the course of the proceedings.

6.3. Furthermore, the request made by the petitioner for grant of extension of time via the communication dated 12.11.2020 was not responded to by respondent no.2 and while passing the order dated 09.12.2020, the reply

given by the petitioner on 23.11.2020 was not taken into consideration.

6.4 Mr Bindumadhavan says, something that we have already noted above, the report of physical inspection was not submitted even after the order dated 09.12.2020 was passed and it was furnished only during the pendency of the present proceedings.

7. On the other hand, Mr Sameer Vashisht, who appears on behalf of respondent no.2, says that there is a discrepancy and/ or contradiction as to when the petitioner closed down his business at the given address. For this purpose, he has drawn our attention to page 53 of the case file and cross-referenced the same with page 122 of the case file.

7.1. Mr Vashisht says that the petitioner was given an opportunity to respond to the show cause notice and since there was no response, the impugned order dated 09.12.2020 was passed. It is stated that in any event, the petitioner was given a personal hearing *qua* the revocation application, and it was only thereafter that the order was passed.

7.2. Furthermore, Mr Vashisht says since the order rejecting the revocation application has been passed, the petitioner should be relegated to an alternate statutory remedy. In this behalf, a copy of the document dated 09.03.2022 has been placed before us.

7.3. A perusal of the document dated 09.03.2022 shows that it is show cause notice setting out reasons, as to why the petitioner's refund application is liable to be rejected and not an order rejecting the refund claim. To be noted, no such order has been placed before us.

8. Having heard learned counsel for the parties, we are of the view that the impugned orders dated 09.12.2020 and 18.02.2021, would have to be set aside.

8.1. It is clear that the petitioner had sought extension of time to respond to

the show cause notice dated 11.11.2020.

8.2. In any event, the petitioner was given time to respond to the same in “seven working days”. The calculation made by the petitioner demonstrates 23.11.2020 was in fact the 7th working day.

8.3. The petitioner, admittedly, filed a reply on 23.11.2020, in which reasons were set out as to why the petitioner wished to continue with its registration. We have already extracted hereinabove, the relevant part of the reply dated 23.11.2020.

8.4. Clearly, when the first impugned order i.e., order dated 09.12.2020 was passed, the concerned officer had with him the reply dated 23.11.2020. There is no reference to the said reply or the reasons set out therein, in the order dated 09.12.2020.

8.5. The order whereby the application for revocation was rejected which is, as noticed above, the order dated 18.12.2021, shows that an inspection was carried out on the premises of the petitioner. It is not in dispute that although, Rule 25¹ requires inspection to be done in the presence of the person whose property is being inspected, it was not done as the petitioner had no notice of the inspection.

9. Besides the aforesaid, we may also note that the perusal of the order dated 09.12.2020 clearly discloses that there is no tax outstanding *qua* the

¹ “Section 25. Physical verification of business premises in certain cases.- where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.”

petitioner.

9.1. It is quite obvious that the petitioner wishes to continue maintaining its registration, if only for the purposes disclosed in its reply dated 23.11.2020.

10. We may also add, having gone through the document dated 09.03.2022 issued by respondent no.2, (whereby the petitioner has been put to notice as to the grounds on which its refund application is liable to be rejected), it discloses that it is founded on the fact that the petitioner's registration has been cancelled and that too with retrospective effect i.e., w.e.f. 01.07.2019.

11. Thus, for the foregoing reasons, as noticed above, we are persuaded to set aside the impugned orders dated 09.12.2020 and 18.02.2021.

11.1. It is ordered accordingly.

12. The respondents will ensure that the petitioner's registration is revived.

12.1. However, as indicated by the petitioner, once the purpose of the registration is over, it would *suo motu* apply for de-registration.

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

13.1. Consequently, the pending applications stand closed.

14. For the purposes of good order and record, the Registry is directed to scan and upload the copy of the document dated 09.03.2022 so that the same stands embedded in the case file.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

APRIL 26, 2022/aj

[Click here to check corrigendum, if any](#)