

\$~36

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decision delivered on: 22.12.2022

+ **W.P.(C) 17568/2022&CM APPL. 56105/2022**

REKHA SAXENA

.....Petitioner

Through: Mr Ruchir Bhatia, Advocate

versus

COMMISSIONER OF CENTRAL GOODS AND
SERVICES TAX DELHI WEST & ORS.

.....Respondents

Through: Mr R. Ramachandran, Sr. Standing
Counsel for R-1 & R-2.

Mr Avnish Singh, SCGC with Mr
Santosh Kr Yadav and Mr Aditya
Vikram, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

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

RAJIV SHAKDHER, J. (ORAL):

CM No.56105/2022

1. Allowed, subject to the petitioner filing legible copies of annexures, at least three days before the next date of hearing.

W.P.(C) 17568/2022

2. Issue notice.

3. Mr R. Ramachandran accepts notice on behalf of the contesting respondents i.e., respondent nos.1 and 2.

4. In view of the order that we propose to pass, Mr Ramachandran says that a counter-affidavit is not required be filed. Therefore, with the consent

of learned counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

5. The substantive prayers made in the writ petition read as follows:-

“i) Issue a writ of certiorari or any other writ, order or direction in the nature thereof quashing the impugned orders dated 29.09.2022 and 16.09.2019;

ii) Issue a writ of declaration or any other writ, order or direction in the nature thereof declaring Rule 21 (h) of the Central Goods and Services Tax Rules, 2017 as ultra vires Articles 14, 19(l)(g) and 21 of the Constitution of India;

iii) Issue a writ of mandamus or any other writ, order or direction in the nature thereof directing the Respondents to revoke the impugned order dated 16.09.2019 and restore the GST registration of the Petitioner during the pendency of the present petition.”

6. Mr Ruchir Bhatia, who appears on behalf of the petitioner, says that he is not pressing the relief sought in the prayer clause (ii).

6.1 Mr Bhatia’s statement is taken on record.

7. The record shows, that the order of cancellation of registration dated 16.09.2019 has been passed without due application of mind.

7.1 There are two contradictory statements contained in the order, which are best demonstrated by extracting the relevant part of the said order :

“This has reference to your reply dated 12/09/2019 in response to the notice to show cause dated 02/09/2019

Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s).

1. The taxpayer did not appear for personal hearing nor submitted any reply in response to the online notice send to them for suo motto cancellation of registration.

Taxpayer is requested to self-assess tax liability and late fee for delay/ non filing of GST returns and pay accordingly before filing final GSTR-10. It is also informed that as per sub-section 3 of Section 29 of the Central Goods and Services Tax Act, 2017, the cancellation of registration shall not affect the liability of the person 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. Please file. GSTRIO (Final return) within 3 months of the date of cancellation or date of order of cancellation, whichever is later.”

8. Clearly, while passing the order dated 16.09.2019, the concerned officer was not even aware of the fact, as to whether or not a reply had been filed to the show-cause notice dated 02.09.2019.

8.1 The order begins by referring to a reply dated 12.09.2019, and then goes on to state that no reply has been filed.

9. The petitioner, on the other hand, has not covered herself with glory either.

9.1 The petitioner, it appears, filed an appeal only on 24.08.2022, after a delay of nearly 2 years and 8 months from the date when the order was passed.

9.2 The Appellate Authority *via* order dated 29.09.2022 dismissed the appeal, principally on the ground that it was barred by limitation provided under Section 107(1) of the Central Goods and Services Tax Act, 2017 [in short “Act”].

10. Mr Bhatia says, that the petitioner is not only willing to pay the tax for the period when returns were not filed, but is also agreeable to pay the interest as well as fine, for the delay in filing the returns.

11. Given the aforesaid position, we are of the view, that orders cancelling registration are a serious matter, they impact the registrants, and therefore, the concerned officer should carefully pen down the orders, and not rely on the system generated orders.

11.1 In this case, it appears that the order dated 16.09.2019 was framed without due application of mind.

12. Therefore, given the statement made by Mr Bhatia before us, we are inclined to give another opportunity to the petitioner to make course correction.

12.1 In our view, those who are willing to be part of the tax regime should be given, as far as possible, an opportunity to do so,

13. Thus, given the aforesaid facts and circumstances, the impugned orders dated 29.09.2022 and 16.09.2019 are set aside.

13.1 The matter is remitted to the Appellate Authority to examine the same on merits.

13.2 However, before the Appellate Authority proceeds further in the matter, the petitioner will be called upon to deposit the tax, along with the interest and fine.

13.3 It is only after the Appellate Authority is satisfied that the deficit amount is deposited, will it proceed further in the matter, and thereafter pass appropriate orders, as deemed fit.

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

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

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 22, 2022

Aj

Click here to check corrigendum, if any