2024:DHC:5737-DB

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

% *Date of Decision: 01.08.2024*

\+ **W.P.(C) 5490/2024**

SHAKTI METALS THROUGH ITS PROPRIETOR
MR PRAHLAD KUMAR SHARMA .....Petitioner

Through: Mr Rakesh Kumar and Mr Parveen Kumar Gambhir, Advocates.

versus

THE COMMISSIONER CENTRAL GOODS AND SERVICES TAX AND ORS .....Respondents

Through: Mr Gibran Naushad, Senior Standing Counsel.
Mr Shubham Goel, Proxy counsel for Mr Rajeev Aggarwal, ASC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, impugning the Show Cause Notice dated 26.05.2022 (hereafter *the impugned SCN*); an order dated 24.06.2022 (hereafter *the impugned cancellation order*) passed pursuant to the impugned SCN, whereby the petitioner's Goods and Services Tax (GST) registration was cancelled; and the order dated 21.04.2023 passed by the Appellate Authority (hereafter *the impugned appellate order*), whereby the petitioner's appeal against the impugned cancellation order was rejected. The petitioner prays for restoration of its GST registration.

2. The petitioner is an individual and engaged in the business of dealing

in aluminium, copper, ferrous, zinc waste and scrap and carries on the said business in the name and style of sole proprietorship concern 'M/s. Shakti Metals'.

3. The petitioner was registered with the GST authorities and was assigned the Goods and Services Tax Identification Number (GSTIN) – 07BMYPS9086H1ZV. The petitioner claims that he was regularly carrying on his business till November, 2021. However, there was no business activities thereafter, as his health was affected due to COVID-19. The petitioner claims that he has since been stable and intends to carry on his business activities. The Proper Officer proposed to cancel the petitioner's GST registration and accordingly, issued a show cause notice dated 13.04.2022 (hereafter *the SCN*) calling upon the petitioner to show cause as to why his registration be not cancelled. The only reason stated in the SCN reads as "*In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts*". As is apparent from the above, the SCN did not set out any specific details of the allegation against the petitioner and the same is incapable of eliciting a meaningful response.

4. Thereafter, the Proper Officer passed an order dated 23.04.2022 cancelling the petitioner's GST registration with effect from the date of the SCN. The only reason stated in the said order was that the petitioner neither appeared for a personal hearing nor has responded to the SCN. It also mentions that the SCN was issued on the basis of DC(AE) directions. The petitioner made an application for revocation of cancellation of his GST registration in Form GST REG – 21 dated 27.04.2022.

5. The petitioner claims that he owns the property declared as his

principal place of business being D-174, Mayapuri, Phase-II, New Delhi-110064. He disputed the version that the firm was a non-existent firm and claims that he is carrying on his business activities from the said premises. He further explained that the said property was initially registered in the name of his late father Sh. Gyarsi Lal Sharma which subsequently got registered in the name of his three sons. He claimed that he was also paying rent to his brothers for using the said premises. Additionally, he also furnished receipt of house property tax for the financial year 2021-22. Further he explained that he had been filing 'NIL' annual returns since November, 2021 because no business had taken place on account of his ill health.

6. The petitioner's application for recall of his GST registration was allowed by an order dated 13.05.2022 passed by the Proper Officer, and the petitioner's GST registration was restored.

7. However, immediately after the petitioner's GST registration was restored, the Proper Officer issued the impugned SCN proposing to cancel the petitioner's GST registration for the reason that it (M/s. Shakti Metals) was found to be non-existent during the physical verification. The petitioner was called upon to furnish a reply to the impugned SCN within a period of seven working days from the date of service of the impugned SCN and was further directed to appear before the concerned officer on 03.06.2022. Additionally, the petitioner's GST registration was suspended with effect from the date of the impugned SCN, that is, with effect from 26.05.2022.

8. The petitioner responded to the impugned SCN once again reiterating that he was carrying on his business from its principal place of business (D-

174, Maya Puri, Phase-II, New Delhi-110064). The petitioner claims that he owned the said premises and had carried on his business activities from the said premises. He also reiterated that the said property was initially registered in the name of his late father and subsequently got transferred in the name of his two brothers besides him.

9. Notwithstanding the explanation furnished by the petitioner, the Proper Officer passed the impugned cancellation order. It is also material to note that the petitioner's GST registration was cancelled retrospectively from 12.04.2022 which was one day prior to the date of issuance of the show cause notice dated 13.04.2022. The reasons set out in the impugned cancellation order reads as under:

> "1. In response of this office letter dated 31.05.2022, a letter, under C.No.DW/GST/AE/PE/GR.10/SUPP./SAMDE & uNIVERSAL/843/2022/9904 dated 20.06.2022 issued by DC(AE) CGST Delhi West, has been received in this office therein mentioned that cancellation of GST registration of M/s Shakti Metal may not be revoked and consequential action may be taken as per directions issued under their letter dated 12.04.2022."

10. It is apparent from the above that the impugned cancellation order was passed pursuant to the direction issued by another officer *vide* letter dated 20.06.2022. However, the said letter was neither mentioned in the impugned SCN nor the copy of the letter was subsequently sent to the petitioner for eliciting a response.

11. It is apparent that the impugned cancellation order was thus passed in violation of the principles of natural justice and was liable to be set aside on

the said ground.

12. The petitioner assailed the impugned cancellation order by filing an appeal under Section 107 of the Central Goods & Services Tax Act, 2017 (hereafter *the CGST Act*). The Appellate Authority considered the reply filed by the petitioner to the impugned SCN and rejected the same on the ground that it was not supported by any documentary evidence, whereby the Adjudicating Authority could assess that the petitioner was in existence at the registered premises at the time of physical verification. The Appellate Authority noted that the petitioner had submitted a copy of the property tax receipt for financial year 2022-23 which was dated 15.05.2022, however, found the same to be insufficient as it was issued prior to the date of the impugned SCN.

13. Aggrieved by the same, the petitioner filed the present petition.

14. The learned counsel appearing for the respondents submitted that since the petitioner had admitted that he was not carrying on his business activities since November, 2021, no order ought to be passed directing restoration of the petitioner's GST registration.

15. We find no merit in the said contention. The petitioner in his application dated 27.04.2022 seeking revocation of the order of cancellation – which was subsequently allowed by an order dated 13.05.2022 – had clearly stated that no business activities were being carried out by him on account of him suffering with COVID-19. He had further stated that he was "gradually stable and will continue and carry on further business activities". It is also stated that the petitioner has thereafter filed 'NIL' returns on account of lack of business activity. Undisputedly, the petitioner has a

fundamental right to carry on legitimate business and the same cannot be interdicted by cancellation of his GST registration.

16. The petitioner had provided property tax receipts and had also explained that he was the owner of his principal place of business. None of these facts were disputed. It is material to note that the said facts form the contents of the petitioner's application dated 27.04.2022 for seeking revocation of cancellation of his GST registration which was allowed.

17. As noted above, the impugned cancellation order was passed by the Proper Officer based on the directions issued by another authority which is impermissible. The Proper Officer was required to satisfy himself as to the reasons for cancelling the petitioner's GST registration. Since the only allegation against the petitioner was that he was non-existent which was sufficiently addressed by the petitioner by claiming that he is the owner of his principal place of business, the petitioner's GST registration could not be cancelled on the ground of him being a fictitious entity or not in existence. As noted above, temporary suspension of business activities on account of 'ill health' do not warrant cancellation of a taxpayer's GST registration.

18. Although, the petitioner had a remedy of an appeal against the impugned appellate order under Section 112 of the CGST Act but the petitioner cannot avail the same as the Goods and Services Tax Appellate Board has not been constituted as yet. Thus, we consider it apposite to entertain the present petition. The petition is accordingly allowed. The impugned SCN; the impugned cancellation order and the impugned appellate order are set aside. The respondents are directed to forthwith restore the petitioner's GST registration.

19. We, however, clarify that this order would not preclude the respondents from initiating any action if it is found that the petitioner has contravened any provision of law. This order would also not preclude the concerned authorities from initiating any fresh action for cancellation of the petitioner's GST registration if there are grounds for the same, however, such an action shall be initiated in accordance with law and after affording the petitioner an opportunity to contest any such proposed action.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 01, 2024
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Click here to check corrigendum, if any