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

\+ W.P.(C) 8438/2024 & CM No.34841/2024

R N GARG AND SONS THROUGH PROPRIETOR AMAN GARG .....Petitioner

Through: Mr. Prabhat Kumar & Mr. Utkarsh Kumar, Advs.

Versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Ashish Batra, Adv. for R-1.
Mr. Avishkar Singhvi, Mr. Vivek Kumar Singh, Mr. Naved Ahmed & Mr. Shubham Kumar, Advs. for R-2&3.

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

<u>O R D E R</u>

% **10.07.2024**

<u>CM No.34842/2024 (for exemption)</u>

1. Exemption is allowed, subject to all just exception.

2. The application is disposed of.

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3. Issue notice.

4. Learned counsel appearing for the respondents accept notice.

5. The petitioner has filed the present petition, *inter alia*, praying as under:

> "a) Issue a writ of Certiorari, or any other suitable writ, order, or direction, to quash/set aside the impugned order dated 18.04.2024 & also Show Cause Notice dated 11.12.2023
>
> b) Issue a writ of Certiorari, or any other suitable writ, order, or direction, thereby declaring that GST registration of M/s. SK Trader (GSTIN:07EKZPK4297Q1ZP) M/s. Sunrise Marketing (GSTIN:07HCQPS6174C3ZZ), M/s Shree Racee Sales Corp (GSTIN: 07CGPPM9162A1Z7) & M/s Suryaditya Metals (GSTIN: 07JPEPS2502K1ZN) cannot be cancelled retrospectively for the

period in which the aforesaid firms have filed their respective returns and paid the taxes."

6. The learned counsel appearing for the petitioner states, at the outset, that he is confining the present petition to assailing the order dated 18.04.2024 (hereafter *the impugned order*) passed under Section 73 of the Central Goods & Services Tax Act, 2017 (hereafter *CGST Act*) / Delhi Goods & Services Tax Act, 2017 (hereafter *DGST Act*) and the Show Cause Notice dated 11.12.2023 (hereafter *the impugned SCN*) pursuant to which the impugned order was passed.

7. The petitioner was registered under the CGST Act with effect from 30.11.2017. However, its registration was subsequently suspended from 18.11.2022.

8. The petitioner was issued the impugned SCN calling upon the petitioner to show cause as to why an aggregate demand of ₹33,05,034/- should not be raised in respect of SGST and CGST. It was alleged that the petitioner had not correctly declared his tax liability in its annual returns (filed in Form GSTR-09). The annexure to the impugned SCN made a reference to Section 16(2)(c) of the CGST Act, which proscribes a registered tax payer to avail Input Tax Credit (hereafter *ITC*) on supply of goods and services against which the tax had not been deposited with the government. It also set out a tabular statement indicating the reasons for the proposed demand. The said tabular statement is reproduced below:

"S. No.	Issue	SGST	CGST	IGST	CESS	Total
1	2	3	4	5	6	7
1	Supplier registration cancelled before date of invoice	813422	813422	0	0	1626844
2	Supplier failed to file GSTR-3B and did not pay tax on the invoices declared in GSTR-01	0	0	0	0	0

3	Supplier filed GSTR-3B with Nil turnover and did not declare or pay tax corresponding to the invoices declared in GSTR-01	0	0	0	0	0
4	Total(S.NO. 1+2+3)	813422	813422	0	0	1626844”

9. The said tabular statement indicates that the demand proposed to be raised in the impugned SCN is on the ground that GST registration of suppliers from whom the petitioner had availed supplies, was cancelled prior to the date of invoices.

10. The petitioner claims that it had duly complied with Section 16 of the CGST Act. The petitioner has also annexed with its reply the tax invoice, proof of receipt, bank statements and Form GSTR-2A, to demonstrate compliance with the said conditions. The petitioner asserted that the transactions were executed with the suppliers whose GST registration was active at the material time. It is contended that the right to avail ITC could not be adversely affected by retrospective cancellation of the GST registration of a supplier. The petitioner also referred to various decisions in support of this contention.

11. The impugned order indicates that the petitioner had availed supplies to those suppliers whose registration had been cancelled. The concerned officer found that two of the said suppliers had deposited the tax and therefore, the demand in respect of the supplies made by these two suppliers were dropped. However, demand in respect of the supplies made by four other suppliers were confirmed on the ground that their registration was cancelled due to various reasons. The relevant portion of the annexure to the impugned order, which sets out the complete reasoning for confirming the demand to the extent of ₹6,76,751/- in respect of SGST and ₹6,76,751/- in respect of CGST is set out below:

"Excess ITC claimed from cancelled dealers, return defaulters & tax non payers:

1. Proposed Tax of Rs.8,13,422/- (SGST), Rs.8,13,422/- (CGST). The reply of the taxpayer has been examined from the GST portal and found that the out of 06 cancelled suppliers two suppliers viz. M/s Durga Traders (GSTIN: 07ANAPJ4201F1ZO) and M/s. SM Traders (GSTIN: 07JYSPS5122Q1Z9) have been cancelled due to return defaulter and the suppliers have paid the due tax hence, demand of the these suppliers are dropped. Further, rest of the suppliers are cancelled due to GSTR-3B/Suspicious transactions/Non-existing/Others. hence, the difference tax demand i.e. **Rs.6,76,751/- under SGST and Rs.6,76,751/- under CGST** is payable along with interest and penalty thereon by taxpayer **(DRC-07 attached)**"

12. It is apparent from the above that the respondents have not considered contentions raised by the petitioner in its reply to the impugned SCN, including that it cannot be mulcted with liability on account of retrospective cancellation of the GST registration of its suppliers. The petitioner also claimed that it had paid the tax in respect of its supplies.

13. The reply filed by the petitioner also indicates that the relevant documents including bank statements and invoices were also attached. It is also material to note that the impugned order does not specifically state that the suppliers to whom the petitioner availed supplies, had not paid the tax in respect of which ITC was claimed by the petitioner. It merely states that "suppliers are cancelled due to GSTR-3B/suspicious transaction /non-existing/Others".

14. Although, the petitioner has efficacious remedy of an appeal against the impugned order. However, we do not consider it apposite to relegate the petitioner to avail of the said remedy. This is also for the reason that the impugned order cannot be considered as a reasoned order. Neither the contentions advanced by the petitioner have been dealt with, nor the authorities relied upon by the petitioner have been considered.

15. In view of the above, we set aside the impugned order and remand the matter to the Proper Officer, to consider afresh. The Proper Officer is also at liberty to call for such other documents as he may consider relevant to satisfy himself that the transactions entered into by the petitioner were genuine transactions.

16. The petitioner is also at liberty to file such other documents as it may consider necessary in support of its contentions, within a period of two weeks from date.

17. The Proper Officer shall pass the order after affording the petitioner an opportunity of a hearing.

18. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 10, 2024
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