2024:DHC:5033-DB

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

% ***Date of Decision: 08.07.2024***

\+ **W.P.(C) 9168/2024**

M/S SHRI SAI METALS .....Petitioner

Through: Mr. Pranay Jain and Mr. Karan Singh, Advocates.

versus

PRINCIPAL COMMISSIONER OF GOODS AND SERVICE TAX WEST DELHI .....Respondent

Through: Mr. Jivesh Tiwari, Sr.P.C and Ms. Samiksha, Advocates for UOI.
Mr.Gibran Naushad, Sr Standing Counsel. (through VC)

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

**VIBHU BAKHRU, J. (ORAL)**

**CM APPL.37506/2024** (Exemption)

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

**W.P.(C) 9168/2024**

3. Issue notice. Learned counsel for the respondent accepts notice.

4. The petitioner has filed the present petition, *inter alia*, praying that appropriate directions be issued for cancellation of the petitioner's GST Registration in terms of its application (reference number AA070124043893A dated 16.01.2024).

5. The petitioner claims that it was registered with the GST Authorities and was assigned a Goods and Services Tax Identification Number (GSTIN: 07BBZPS9347B3ZV). The petitioner further claims that during the period the petitioner was carrying on its business, it had discharged its entire tax liability

and there is no outstanding tax due and payable by the petitioner.

6. Since, the petitioner closed down its business, the petitioner made an application dated 16.01.2024 seeking cancellation of its GST registration. Pursuant to the said application, the proper officer issued a show cause notice dated 16.02.2024, *inter alia,* stating that he was not satisfied with the petitioner's application for the following reasons:-

> *"1. Basic Details - Others (Please specify) - Please make reconciliation sheet in r/o GSTR-3B and GSTR-1 returns for taxable outward supply & tax, payment of tax through ITC & Cash alongwith late fee/interest. Further, reconciliation sheet for ITC claimed in GSTR-3B & ITC available in GSTR-2A from the date of registration to date of request for cancellation and file all returns upto application of cancellation."*

7. The proper officer also called upon the petitioner to submit its reply to the said show cause notice on or before 27.02.2024. The petitioner claims that it responded to the said notice, however, is unable to place its reply on record as the same could not be downloaded from the GST Portal.

8. It appears from the notice that the Proper Officer is seeking to ascertain the petitioner's tax liability, if any. However, the petitioner's request for cancellation of the GST Registration is not contingent on its liability to pay tax. The learned counsel for the petitioner also refers to a circular dated 26.10.2018 which, *inter alia*, specifies that the application for cancellation of GST Registration ought to be decided within a period of 30 days, except in certain exceptional circumstances. Paragraph 5 of the said circular is relevant and is set out below:-

> *"5. Since the cancellation of registration has no effect on the liability of the taxpayer for any acts of commission/omission committed before or after the date of cancellation, the proper officer should accept all such applications within a period of 30 days from the date of filing the application, except in the following circumstances:*
> *a) The application in FORM GST REG-16 is incomplete, i.e. where all the relevant particulars, as detailed in para 4 above, have not been entered;*

*b) In case of transfer, merger or amalgamation of business, the new entity in which the applicant proposes to amalgamate or merge has not got registered with the tax authority before submission of the application for cancellation.*
*In all cases other than those listed at (a) and (b) above, the application for cancellation of registration should be immediately accepted by the proper officer and the order for cancellation should be issued in FORM GST REG-19 with the effective date of cancellation being the same as the date from which the applicant has sought cancellation in FORM GST REG-16. In any case the effective date cannot be a date earlier to the date of application for the same."*

9. In the aforesaid circumstances, we consider it apposite to dispose of the present petition by directing the respondent to consider the petitioner's application for cancellation of the GST Registration, and pass an appropriate order.

10. We clarify that the cancellation of the petitioner's GST Registration would not absolve the petitioner from any tax liability or other statutory compliances for the period prior to cancellation.

11. The Proper Officer shall pass an appropriate order on the petitioner's application within a period of four weeks from date.

12. The present petition is allowed in the aforesaid terms.

**VIBHU BAKHRU, J**

**SACHIN DATTA, J**

**JULY 08, 2024**
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