



2024:DHC:5634-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 31.07.2024

+ **W.P.(C) 9418/2024 CM APPL. 38634/2024 CM APPL. 38635/2024**

M/S A P ENTERPRISES

.....Petitioner

Through: Mr. R.P. Singh, Mr. Aman Sinha,
Mr.Yash Agarwal and Mr. Shivam
Sharma, Advocates.

versus

SALES TAX OFFICER CLASS II /AVATO,
WARD-83, ZONE-7, DELHI

.....Respondent

Through: Mr. Avishkar Singhvi, ASC Mr.
Vivek Kumar Singh, Mr. Naved
Ahmad and Mr. Shubham Kumar,
Advocates.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition impugning the Show Cause Notice dated 13.11.2023 (hereafter *the impugned SCN*), whereby the petitioner was called upon to show cause as to why its Goods and Services Tax (GST) registration should not be cancelled. In addition, the petitioner also impugns an order dated 24.11.2023 (hereafter *the impugned cancellation order*), whereby the petitioner's GST registration was cancelled with retrospective effect from 03.04.2023.

2. The appellant filed an appeal against the impugned cancellation order



before the Appellate Authority under Section 107 of the Central Goods and Services Tax Act, 2017(hereafter *the CGST Act*)/ Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*). However, the same was dismissed by an order dated 30.05.2024 (hereafter *the impugned order*).

3. Although, the petitioner has the remedy of an appeal under Section 112 of the CGST Act/ the DGST Act, the petitioner is unable to take recourse to the said remedy as the Goods and Service Tax Tribunal has not been constituted as yet. In the circumstances, we consider it apposite to entertain the present petition.

4. The only reason set out in the impugned SCN for proposing the cancellation of the petitioner's GST registration reads as under: -

“1 Rule 21 (g)-person violates the provision of rule 86B.”

5. The petitioner was called upon to furnish a reply to the impugned SCN within a period of seven working days from the date of the impugned SCN and was also directed to appear before the proper officer on 22.11.2023. Additionally, the petitioner's GST registration was suspended with effect from the date of the impugned SCN, that is with effect from 13.11.2023.

6. The petitioner responded to the impugned SCN stating that in terms of Rule 86B of the Central Goods and Services Tax Rules, 2017 (hereafter *the CGST Rules*), he would deposit 1% of the total sale in cash ledger and requested the proper officer to activate its GST registration in order to enable him to carry on the business.

7. The petitioner's GST registration was cancelled by the impugned



cancellation order for the following reason:-

“Rule 21 (g)-person violates the provision of rule 86B.

ALSO FIRM FOUND NON FUNCTIONING AT THE TIME OF GSTI REPORT DATED 24.11.2023.”

8. As noted above, the petitioner’s GST registration was cancelled with retrospective effect 03.04.2023.

9. The impugned SCN does not contain any details of the allegations against the petitioner; it merely refers to Rule 21(g) (presumably of the CGST Rules) and states that the person violates the provisions of Rule 86B. Rule 21(g) of the CGST Rules pertains to the issuance of invoices without supply of goods. Thus, it appears that the petitioner’s GST registration was proposed to be cancelled on an allegation that it had issued invoices without supply of goods. However, the impugned SCN neither provides the details of invoices that are allegedly not covered by supply of goods, nor provides any clue as to transaction alleged to be in violation of the aforesaid rule.

10. It is well settled that a show cause notice must clearly state the reasons on which the adverse action is proposed in order to enable the noticee to respond to the allegations.

11. We are unable to accept that in the present case the grounds as stated in the impugned SCN are sufficient to enable the petitioner to respond to the allegation in any meaningful manner.

12. It is also material to note that there was no suggestion in the impugned SCN to cancel the petitioner’s GST registration with retrospective



effect.

13. The impugned cancellation order refers to another additional reason for cancelling the petitioner's GST registration, apart from that stated in the impugned SCN. The same being that the petitioner was not found functioning at the time of GSTI report dated 24.11.2023. However, neither the copy of the said report was provided to the petitioner nor the petitioner was called upon to respond to the same. As noted above, there is no allegation in the impugned SCN that the petitioner was found non-functioning.

14. It is clear that the impugned order has travelled beyond the scope of the impugned SCN and thus, is passed in violation of settled principles of natural justice.

15. The petitioner had filed the appeal, which was dismissed by the impugned order. The impugned order indicates that the petitioner has furnished the written explanation, however, the said explanation was not accepted. The impugned order records that the petitioner had, during the course of the proceedings, filed an affidavit that it would immediately deposit any demand/dues/liability arising out of the activities of selling dealers.

16. The learned counsel for the petitioner submits that in case it is found that the petitioner had availed any Input Tax Credit in respect of the supplies and the suppliers had not paid the tax, it would deposit the amount of dues.

17. Insofar as the allegation that the petitioner was not found at the



principal place of business is concerned, the impugned order mentions that the Ward Officer had placed on record the Field Visit Report wherein it was mentioned that the firm was found existing and functioning at the mentioned address and the tax payer had submitted an undertaking that no invoice has been raised during the suspension of the GST registration.

18. Mr Singhvi, learned counsel for the respondent submits that there is an error apparent in the impugned order inasmuch as it does not refer to the report dated 24.11.2023, whereby the Officer had reported that the firm of the petitioner was found non-existent. The said contention is without any basis.

19. The Appellate Authority in the impugned order had referred to the report dated 26.03.2024 and noted that the Ward Officer had reported that the petitioner was found existing at the time of the visit at the given address.

20. We find merit in the contention that the petitioner's GST registration cannot be cancelled on cryptic allegations and on the basis of the impugned SCN. As noted above, the impugned SCN did not state any specific allegation, which could be explained by the tax payer.

21. In view of the above, the present petition is allowed. The impugned cancellation order and the impugned SCN are set aside. The respondent is directed to restore the petitioner's GST registration forthwith.

22. It is clarified that this order will not preclude the respondents from initiating fresh proceedings in accordance with law, in the event it proposes to take any adverse action against the petitioner.



2024:DHC:5634-DB



23. The petition is disposed of in the aforesaid terms. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 31, 2024

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Click here to check corrigendum, if any