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

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Date of Decision: 15.07.2024

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W.P.(C) 9516/2024, CM APPL.39030/2024

M/S. ELASTO RUBBER PVT LTD

.....Petitioner

Through: Mr. Vibhas Kumar Jha, Mr. Rajat
Pandey and Ms. Manju Pandey, Advs.

versus

THE COMMISSIONER OF SGST DELHI & ORSRespondents

Through: Mr. Udit Malik, Adv.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (Oral)**

1. Issue notice. Learned counsel for respondents accepts notice.
2. The petitioner has filed the present petition impugning the order dated 28.06.2024 (hereafter *the impugned order*), whereby the petitioner's appeal under Section 107 of the Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, (CGST Act, 2017/DGST Act) was rejected on the ground of delay.
3. The petitioner was registered with the GST Authorities with effect from 01.07.2017 and was assigned Goods and Services Identification Number (GSTIN) - 07AAACE6120CIZB.
4. The petitioner claims that it regularly filed its GST Returns for the tax period 2017-2021. However, there were certain medical issues in his family



resulting due to the outbreak of COVID-19 and there were certain defaults in statutory compliances.

5. The petitioner states his business suffered during the pandemic. He states that consultant engaged to file GST Returns for the period 2021-22 did not inform him about the notices sent by the GST Department and placed on the web portal.

6. The petitioner fairly admits that he was remiss in failing/neglecting to file the returns required during the said period.

7. The proper office issued a Show Cause Notice dated 08.10.2022 (hereafter *the SCN*) calling upon the petitioner to show cause why its GST registration should not be cancelled on account of failure to file returns for a continuous period of six months.

8. The petitioner was directed to furnish its reply within a period of seven days of service of notice and to appear before the proper officer on 07.11.2022.

9. The petitioner was also put to notice that if he failed to file the reply or failed to appear before the concerned officer on the appointed date and time, the matter would be decided *ex-parte* on the basis of the available record and on merits.

10. The petitioner's GST registration was also suspended with effect from the date of notice – 08.10.2022.

11. The petitioner states that he did not receive the SCN and also failed to



notice the same on its GST portal. He explained his failure to do so on account of outbreak of COVID-19.

12. Since the petitioner did not respond to the SCN or take immediate steps to comply with the provisions of the GST Act by filing its returns, the petitioner's GST registration was cancelled by an order dated 21.08.2023 (hereafter *the impugned cancellation order*) on the ground that he had failed to furnish the details within the prescribed period.

13. It is important to note that in terms of the impugned cancellation order, the petitioner's GST registration was cancelled *ab initio* with retrospective effect from 01.07.2017.

14. The petitioner claims that he was also unaware of the said order and became aware of the same subsequently. The petitioner claims that immediately on becoming aware of the same, the petitioner preferred an appeal (ARN No. AD070324083785R dated 19.03.2024) before the Appellate Authority under Section 107 of the CGST Act/DGST Act, impugning the order dated 21.08.2023.

15. The petitioner states that its business was interrupted on account of the pandemic and he intends to re-commence the same.

16. The petitioner's appeal was dismissed by the impugned order solely on the ground that it was not filed within the prescribed period.

17. It is material to note that the SCN, whereby the petitioner was called upon to show cause as to why the petitioner's GST registration should not be cancelled, did not specifically state that the petitioner's registration was



proposed to be cancelled from a retrospective date.

18. The impugned cancellation order dated 21.08.2023, cancelling the petitioner's GST registration also does not specify any reason as to why the petitioner's GST registration has been cancelled with retrospective effect from 01.07.2017, being the date on which the petitioner was registered with the GST Authorities.

19. In terms of Section 29(2) of CGST Act/DGST Act, the proper officer is empowered to cancel the registration from such date as he considers fit for the reasons as set out in Section 29 (2) of CGST Act/DGST Act. However, the said decision cannot be whimsical or arbitrary and must be informed by reason.

20. In the present case, the only ground on which the petitioner's GST registration was proposed to be cancelled was for not filing of returns.

21. We are unable to discern any reason why the petitioner's GST registration was also cancelled covering the period during which the petitioner had duly filed his returns and discharged its tax liability.

22. This court is also informed that once a taxpayer's registration is cancelled, he is not permitted to reapply to obtain fresh registration.

23. We have some reservations as to whether such consequence follows on account of tax payer GST registration being cancelled as the same would imply that the tax payer whose GST registration is cancelled can no longer carry on its legitimate business. However, it is not necessary for this court to examine this controversy in this petition. Suffice it say that the impugned



cancellation order dated 21.08.2023 is unreasoned as to the decision to cancel the GST registration with retrospective effect.

24. In the given facts of this case, we consider it apposite to set aside the impugned order dated 28.06.2024 and remand the matter to the Appellate Authority to decide it afresh on merits, uninfluenced by the question of delay, after affording the petitioner an opportunity of hearing.

25. We request the learned Appellate Authority to dispose the appeal as expeditiously as possible, preferable within eight weeks from date.

26. The petition is disposed of in the aforesaid terms. All pending applications also stand disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 15, 2024

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