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

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Date of Decision : 15.07.2024+ **W.P.(C) 9518/2024****M/S BIRCHAND**

.....Petitioner

Through: Mr.Sanjeev, Advocate.

versus

COMMISSIONER OF DGST, DELHI AND OTHERS

.....Respondent

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

1. Issue notice. The learned counsel for the respondent accepts notice.
2. The petitioner has filed the present petition impugning the order dated 19.04.2024 (hereafter *the impugned order*) passed by the Appellate Authority under Section 107 of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) / the Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*) whereby the petitioner's appeal against the order dated 30.12.2021 (hereafter *the impugned cancellation order*) cancelling its GST Registration, was rejected.



3. The petitioner was carrying on business since prior to the roll out of the CGST regime with effect from 01.07.2017. Accordingly, he migrated to the said regime and was assigned the Goods and Services Tax Identification (GSTIN) – No. 07AFAPC2167H1ZV, with effect from 01.07.2017.

4. The respondents found discrepancies in the returns filed by the petitioner and issued notice dated 27.01.2021. However, the petitioner states that the same escaped its attention and it did not respond to said notice. In view of the above, the Proper Officer proposed to take steps to cancel the petitioner's GST registration. Accordingly, the Proper Officer issued the Show Cause Notice dated 16.03.2021 (hereafter *the impugned SCN*) calling upon the petitioner to show cause as to why its GST registration number be not cancelled. The reason for proposing cancellation of the petitioner's GST registration as set out in the impugned SCN reads as: "REPLY OF ASMT-10 NOT YET FILED/RECEIVED". The petitioner was called upon to response to the impugned SCN within a period of seven working days. The petitioner's GST registration was suspended with effect from the date of the impugned SCN – 16.03.2021.

5. It is relevant to note that the petitioner was also put to notice that if he failed to furnish the reply within the stipulated period or failed to appear for personal hearing on the appointed date and time, the case would be decided *ex parte* on the basis of available record and on merits. However, the impugned SCN did not specify any appointed date or time of the personal hearing. Thus, undisputedly, the petitioner was not granted any real opportunity of being heard.



6. The petitioner did not respond to the impugned SCN and consequently, the petitioner's GST registration was cancelled by the impugned cancellation order with retrospective effect from 15.07.2017.
7. The tabular statement, as set out in the impugned cancellation order, indicates that no tax was determined to be due and payable by the petitioner.
8. The petitioner claims that it did not receive any physical notice and had not viewed the GST portal. The petitioner also states that during the said period his business was disrupted on account of the COVID-19 pandemic.
9. The petitioner preferred an appeal against the impugned cancellation order before the Appellate Authority on 09.09.2022, however the same was not entertained as it was filed after the expiry of the stipulated period for filling such appeals.
10. It is relevant to note that the Supreme Court in ***Suo Motu Writ Petition (C) No.3/2020 IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION*** had condoned the delay in cases where the period of limitation expired prior to 28.02.2022.
11. It is material to note that the GST registration of the petitioner was cancelled by the impugned cancellation order with retrospective effect, however, no adverse action to the said effect was proposed in the impugned SCN. The impugned cancellation order also does not set out any reason for cancelling the petitioner's GST registration with retrospective effect.
12. In view of the above, in the peculiar facts of the case, we consider it apposite to set aside the impugned order and remand the matter to the



Appellate Authority to decide the petitioner's appeal afresh on merits, uninfluenced by the question of delay, after affording an opportunity of personal hearing to the petitioner.

13. We request the Appellate Authority to dispose of the appeal as expeditiously as possible, preferably within a period of eight weeks from date.

14. The petition stands disposed of in the above terms.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 15, 2024

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Click here to check corrigendum, if any