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

\+ W.P.(C) 10496/2024 and CM APPL. 43152/2024 (Interim Relief)

M/S MS ENTERPRISES (THROUGH ITS PROPRIETOR MAU HASEEN) ....Petitioner

Through: Mr. R P Singh, Mr. Yash Aggarwal, Mr. Aman Sinha & Mr. Ayush Kumar Sharma, Advs.

versus

SALES TAX OFFICER CLASS-II/ AVATO WARD 74, ZONE 7 .....Respondent

Through: Mr. Rajeev Aggarwal, ASC with Mr. Shubham Goel & Mr. Mayank Kamra, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **13.12.2024**

1. Learned counsel for the writ petitioner makes an oral prayer for being permitted to amend the relief clause in the writ petition and to assail the order dated 29 February 2024 pursuant to which its application for revocation of the Goods and Services Tax cancellation order had also come to be rejected. The prayer as made is granted. Let an amended copy of the writ petition be placed on the record within a period of 24 hours.

2. The writ petitioner is aggrieved by the order dated 07 December 2023 in terms of which its registration under the **Central Goods and Services Tax Act, 2017**[1] came to be cancelled. This order has subsequently also come to be affirmed by the appellate authority in

[1] CGST Act

terms of its order dated 30 May 2024. In between those two events, the petitioner also appears to have applied for revocation of the order by which its registration had come to be cancelled. That application too has come to be dismissed in terms of the order of 29 February 2024 and which is questioned additionally in the writ petition.

3. As we read the original **Show Cause Notice**[2] dated 24 November 2023, it is apparent that the same was based on the allegation that the petitioner was not conducting business at the declared place and that he was issuing invoices without any corresponding supply of goods or services. The SCN proceedings came to be finalised in terms of the order dated 07 December 2023 and where the authority observed and held as follows:-

"**Form GST REG-19**
[See rule 22 (3)]

Reference Number: ZA071223028146W **Date**: 07/12/2023

To
MAU HASEEN
H NO-170 GALI NO-2, ANAR WALI MASHJID OLD MUSTAFABAD, New Delhi, North East Delhi, Delhi, 110094
GSTIN/ UIN:07BIXPH1779MlZC
Application Reference Number (ARN): AA0711230694411

Date: 05/12/2023

Order for Cancellation of Registration

This has reference to show cause notice issued dated 24/11/2023.

Whereas reply to the show cause notice has been submitted vide AA0711230694411 dated 05/12/2023; and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of opinion that your registration is liable to be cancelled for following reason(s):
Rule 21(a)-person does not conduct any business from declared place of business

[2] SCN

As per AC(AE), CGST Delhi East letter no.5312 dated 22-ll-2023, firm was involved in passing on of inadmissible ITC without actual supply of goods and services.

The effective date of cancellation of your registration is 01/09/2021.

2. Kindly refer to the supportive document(s) attached for case specific details.- Not Applicable
3. It may be noted that a registered person furnishing return under sub-section (I) of section 39 of the CGST Act, 2017 is required to furnish a final return in FORM GSTR-10 within three months of the date of this order.
4. You are required to furnish all your pending returns.
5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

Place: Delhi
Date: 07/12/2023

Braham Prakash
Sales Tax Officer Class II/AVATO
Ward 74"

4. It becomes apparent at the very outset that while the charge of not conducting business at the declared place was maintained and upheld, the authority additionally held that the firm was involved in passing on of inadmissible **Input Tax Credit**[3] without actual supply of goods and services. It is this order which formed the subject matter of the appeal which came to be preferred.

5. During the course of consideration of that appeal, the appellate authority appears to have instructed the **Goods and Services Tax Inspector**[4] to undertake a field inspection. This becomes apparent from a reading of paragraph 5 of the order passed by the appellate authority and which is reproduced hereinbelow:-

"5. **Report of Ward officer and Field Visit Report of the GSTI**: The comments of Ward Officer on rule 2l(a) were sought on the

[3] ITC
[4] GSTI

> grounds of cancellation that the appellant issues invoices without the supply of goods or service. The report dated 26.03.2024 of the Ward Officer, Ward-74 mentions that '*as per letter received from O/o the Commissioner of CGST, Delhi East vide letter no. AE/INSP/1308/2023-AE/5312 dated 22.11.2023, field visit was conducted on 24.11.2023 and GSTI stated that* ***the firm does not exist on the address****, the phone no. of the firm is not reachable or switched off. The firm has been re-visited and GSTI stated that* ***the firm was found functioning*** *at the registered place of business with sufficient stock. Further, going through the portal, it has come to notice that the dealer has received ITC from suo-moto cancelled dealer*'. The Ward Officer, Ward-74 placed on record Field Visit Report in Form REG·30 [Date of visit:- 19.03.2024] wherein the Goods and Services Inspector (GSTI) mentioned that at the time of field visit, the firm was found functioning. Further, the GSTI reported that the Proprietor of the firm had not produced Aadhar card of the Landlord at the time of field visit. However, the GSTI has ticked in column no.4 of the visit report that the address inspected is not the same as mentioned in the application."

6. As is manifest from the above, the GSTI had found that the firm was in fact functioning at the registered place of business and that sufficient stocks of goods had also been maintained. However, the appellate authority was convinced to dismiss the appeal solely on the ground that the GSTI had also alleged in its report that the address particulars which were mentioned were different from those which existed on their record.

7. Mr. Aggarwal, learned counsel appearing for the respondents has placed for our perusal the Inspection Report and from which we gather that the location details which were mentioned and stand captured therein were the same as those mentioned in the original certification of registration. The appellate authority appears to have confused the issue by virtue of the declarations which were made in respect of the residential address of the writ petitioner.

8. In our considered opinion, once the site which was inspected and which was stated to be the place from where business was being

carried on was found to be in conformity with the disclosures made in the original registration certificate, the order of the appellate authority is clearly rendered unsustainable.

9. That then takes us to evaluate the order which came to be passed while considering the application of the petitioner seeking revocation of cancellation. That application has come to be rejected by the order of 29 February 2024 and which reads thus:-

"**Form GST REG-05**

[See Rule 9(4)]

Reference Number: ZA070224221472Z **Date:** 29/02/2024

To
MAU HASEEN
H No-170 GALI NO-2, New Delhi, ANAR WALI MASHJID
OLD MUSTAFABAD, North East Delhi, Delhi. 110094
GSTIN (if available): 07BIXPHI779MIZC

Order of Rejection of Application for Revocation of Cancellation

You have not replied to the notice issued vide reference no. ZA070224106364Y dated 19/02/2024 within the time specified therein. Therefore, your application is hereby rejected in accordance with the provisions of the Act.

Braham Prakash
Sales Tax Officer Class II /AVATO
Ward 74"

10. As is evident from a perusal of the aforesaid recitals, the solitary reason which has weighed upon the respondent to reject that application was a failure on the part of the writ petitioner to respond to a SCN dated 19 February 2024. Suffice it to note that in the course of considering that application for revocation, the said SCN came to be issued calling upon the writ petitioner to explain why its application be not rejected for the following reason:-

"1 Any Supporting Document- Others (Please specify)- As per direction of the Additional Commissioner(Anti Vvasion, CGST, Delhi East letter No. 5312 dated 22-11-2023 and also GSTI report dated 24/11/2023, firm does not exists"

11. It is ex facie apparent that apart from using the phrase "*any supporting documents*" and "*others*", no further reason was assigned as to why the said application merited dismissal. We, consequently, and for the aforesaid reasons also find ourselves unable to sustain the order of 29 February 2024.

12. We accordingly allow the instant writ petition and quash the order of the appellate authority dated 30 May 2024 as well as the order dated 29 February 2024 pursuant to which the revocation application came to be dismissed.

13. The application seeking revocation shall consequently stand revived to be examined and disposed of afresh in accordance with law.

14. The exercise of consideration of that application be concluded with due expedition and preferably within a period of three weeks from today.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 13, 2024
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