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

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Date of Decision : 01.08.2024

+ **W.P.(C) 10498/2024 & CM APPL. 43156/2024**M/S ALIBABA ENTERPRISES (THROUGH
PROPRIETOR SH. ARIF MALIK)

.....Petitioner

Through: Mr R P Singh, Mr Yash Aggarwal
and Mr Aman Sinha, Advocates.

versus

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

.....Respondent

Through: Mr.Rajeev Aggarwal, ASC and
Mr.Shubham Goel, Advocate.**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, *inter alia*, impugning the Show Cause Notice dated 13.11.2023 (hereafter *the impugned SCN*) whereby the petitioner was called upon to show cause why its GST registration be not cancelled. The petitioner also impugns the order dated 05.02.2024 (hereafter *the impugned order*) whereby the petitioner's GST registration was cancelled with retrospective effect, that is, from 01.07.2017.
2. The petitioner was called upon to show cause as to why its GST registration be not cancelled for failure to furnish the returns for a continuous period of six months. In terms of the impugned SCN, the



petitioner was called upon to furnish the reply within thirty days from the date of the receipt of the notice and to appear before the concerned Proper Officer on 11.12.2023. Additionally, the petitioner's GST registration was suspended from the date of the impugned SCN, that is, 13.11.2023.

3. The petitioner did not respond to the impugned SCN. Consequently, the Proper Officer passed the impugned order cancelling the petitioner's GST registration.

4. The only reason set out in the impugned order, apart from reference to the impugned SCN reads as under: -

“Others

Rule 22(1)/sub-rule (2A) of rule 21A”

5. The learned counsel for the petitioner submits that the reasons as set out in the impugned order are not intelligible. Rule 22(1) of the Central Goods and Services Tax Rules, 2017 (hereafter *the Rules*) requires the Proper Officer to issue a notice to the tax payer in FORM GST REG-17 requiring him to show cause within the period of seven working days from the date of service of notice as to why his registration should not be cancelled. Thus, the reference to Rule 22(1) of the Rules is clearly inapposite as that cannot be a reason to cancel the petitioner's GST registration.

6. It is also difficult to understand the reference to Rule 21A(2A) as the same provides for suspension of the registration in a case where the comparison of returns filed by the registered person under Section 39 of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) indicate discrepancy between the details of outward supplies furnished in FORM



GSTR-1 or the details of the inward supplies derived on the basis of details of outward supplies furnished by his suppliers in their FORM GSTR-1.

7. In the present case, the impugned SCN does not refer to any discrepancy between the inward supplies as declared by the petitioner and the return of the outward supplies filed by the suppliers.

8. It is also material to note that the impugned SCN does not contain any proposal to cancel the petitioner's GST registration *ab initio* that is, with effect from the date when it was granted, that is, 01.07.2017.

9. As noted above, the only reason stated in the impugned SCN is the failure of the petitioner to file returns for a continuous period of six months. It is the petitioner's case that he had filed its return in the month of October 2019, but thereafter had not carried out any transaction.

10. It is contended on behalf of the petitioner that he has closed down his business and therefore, is not aggrieved by the prospective cancellation of its GST registration.

11. In terms of Section 29(2) of the CGST Act, the Proper Officer is empowered to cancel the tax payer's registration, including from a retrospective date, as he deems fit, for the reasons as set out in the said Section. However, it is trite that cancellation from retrospective date cannot be whimsical or arbitrary. The Proper Officer's decision to cancel the registration with retrospective date must be informed by reason. The failure to file the returns for a continuous period of six months, absent anything additional, does not present any reason for cancellation of the tax payer's



GST registration even during the period for which returns were duly filed.

12. In the present case, we are unable to sustain the decision for cancellation of the petitioner's GST registration with retrospective date essentially for two reasons. First, that the impugned SCN did not propose any such action and therefore, retrospective cancellation of the petitioner's GST registration is in violation of the principles of natural justice. And, second, that the decision to cancel the petitioner's GST registration with retrospective effect is not informed by reason.

13. In the given facts of this case, we consider it apposite to direct the impugned order would be operative with effect from the date of the impugned SCN, that is, with effect from 13.11.2023. The impugned order is modified to the aforesaid extent.

14. We clarify that this order will not preclude the respondent authority from initiating or pursuing any action for statutory violation on the part of the petitioner *albeit* in accordance with law.

15. The petition stands disposed of in the aforesaid terms. Pending application also stands disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 01, 2024

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Click here to check corrigendum, if any