$~117

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

% *Date of Decision : 08.08.2024*

\+ **W.P.(C) 10954/2024 CM APPL. 45216/2024**

M/S DISCOVERY INDIA SERVICE

.....Petitioner

Through: Mr Pranay Jain, and Mr Karan Singh, Advocates.

versus

PRINCIPAL COMMISSIONER OF GOODS AND SERVICE TAX NORTH DELHI

.....Respondent

Through: Mr Aakarsh Srivastava and Mr Vaibhav Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

VIBHU BAKHRU, J. (*ORAL*)

1. Issue notice.

2. The learned counsel for the respondent accepts notice.

3. The petitioner has filed the present petition, *inter alia,* praying that the direction be issued to the respondent to restore the petitioner's Goods and Services Tax (GST) registration. The petitioner also impugns the order dated 16.10.2023 (hereafter *the impugned cancellation order*) whereby the petitioner's GST registration was cancelled.

Signature Not Verified
Digitally Signed
By:DUSHYANT RAWAL
Signing Date:14.08.2024
12:35:56

4. The petitioner is registered with the Goods and Services Tax Department and assigned the Goods and Services Tax Identification Number (GSTIN): 07FYEPR3772P1ZI with effect from 24.09.2022.

5. The Proper Officer has issued the show cause notice dated 26.09.2023 (hereafter *the SCN*) and called upon the petitioner to show cause as to why the petitioner's GST registration not be cancelled. The only reason set out in the SCN for proposing to cancel the petitioner's GST registration reads as under:-

> "Section 29(2)(e)-registration obtained by means of fraud, wilful misstatement or suppression of facts"

6. In addition, the SCN also enclosed a letter received by the proper officer from the Office of the Principal Commissioner of GST and Central Excise, Delhi North requesting that the action be taken for cancellation of the GST of certain tax payers, including the petitioner. A tabular statement set out in the said letter indicates the reason for seeking the cancellation of the petitioner's GST registration is that the petitioner was found 'non-existent'.

7. The petitioner was called upon to furnish its reply to the SCN within seven working days and was also directed to appear before the Proper Officer on 03.10.2023. Additionally, the petitioner's GST registration was also suspended with effect from 26.09.2023, that is, from the date of issuance of the SCN.

8. The petitioner responded to the SCN by the letter dated 06.10.2023. The petitioner has also annexed several documents in support of his

assertion that it was existing at the principal place of business. The said supporting documents which were purportedly provided by the petitioner, have not been filed along with the present petition. The learned counsel for the petitioner, who has joined the proceedings through video conferencing submits that the said documents could not be downloaded from the portal, but he is in the possession of the copies of the said documents (five in number) which were annexed with the reply. He states that the same are: rent agreement; Pan Card; Adhaar Card (front and rear); and electricity bill.

9. Notwithstanding, the petitioner had replied to the SCN, the Proper Officer did not consider the same and has passed the impugned cancellation order cancelling the petitioner's GST registration retrospectively from 25.09.2022. The impugned cancellation order does not address the reply filed by the petitioner. No reasons have been stated in the impugned cancellation order in rejecting the petitioner's reply to the SCN, it merely states that it is in reference to the SCN.

10. The learned counsel for the petitioner also points out that the documents annexed with the letter received from the Office of the Principal Commissioner of GST and Central Excise, Delhi North which includes Visit Report, FORM GST INS-01 under Section 67(1) of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*), Panchnama, Geotag Photo of Principal Place of business. However, none of the documents were provided to the petitioner in order to enable the petitioner to respond to the same.

11. The learned counsel for the respondent has handed over a report of the

inspector/authorisation letter (in FORM GST INS-01), Panchnama dated 28.08.2023 drawn at the petitioner's principal place of business, and the photocopy of the photograph showing that a sign board of *Cognota Services India Pvt. Ltd* was also put at the petitioner's principal place of business.

12. Concededly, these documents were never annexed with the SCN even though the same are stated to be available with the proper officer. Since the decision to cancel the petitioner's GST registration is based, *inter alia,* on the said documents, same ought to have been provided to the petitioner, to enable him to respond to the same.

13. The impugned cancellation order is not an informed decision in as much as it does not set out any reason for cancellation of the petitioner's GST registration. The impugned cancellation order does not indicate that the reply of the petitioner was considered. Further, the inspection report of the inspector, Panchnama and the photograph of the premises in question on which the decision to cancel the petitioner's GST registration is claimed to be premised were not supplied to the petitioner. The impugned cancellation order has been passed in violation of the principles of natural justice as the petitioner was never called upon to explain such documents.

14. It is also contended on behalf of the petitioner that the petitioner's GST registration has been cancelled with retrospective effect, that is, 25.09.2022. However, no such adverse action was proposed in terms of the SCN. Thus, the petitioner also had no opportunity to respond as to why its GST registration not be cancelled with retrospective effect.

15. In view of the above, the impugned cancellation order and SCN are

liable to be set aside. In the event, the respondent seeks to cancel the petitioner's GST registration, this order will not preclude it from issuing a fresh show cause notice by setting out all the grounds on which such adverse action is proposed and an order is passed in accordance with law.

16. Needless to state that all rights and contentions of the parties are reserved.

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

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 08, 2024

M

Click here to check corrigendum, if any