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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 09.08.2024

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W.P.(C) 11063/2024**M/S SARASWATI TRADING COMPANY****THROUGH ITS PROPRIETOR SH. RAKESH****.....Petitioner****Through: Mr. Vineet Bhatia, Advocate.****versus****UNION OF INDIA AND ORS.****.....Respondents****Through: Mr. Niraj Kumar, Sr. Government
along with Mr. Chaitanya Kumar,
Advs. for R1/UOI.****Mr. Arnav Kumar, SSC and Mr.
Aranya Sahay, Advs. for R2 to R4.****CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (Oral)**

1. Issue notice.
2. Learned counsel appearing on behalf of the respondents accepts notice.
3. The petitioner has filed the present petition seeking several reliefs.

The prayers made in this petition are set out below:

“a. Issue writ in the nature of mandamus or any other appropriate writ, order or direction to the Respondents to cancel the Registration Certificate of the Petitioner w.e.f. 01.10.2022.

b. Issue writ in the nature of mandamus or any other appropriate writ, order or direction setting aside the impugned Notice dated 13.12.2022.



c. Issue writ in the nature of mandamus or any other appropriate writ, order or direction setting aside the impugned Order dated 16.01.2023.

d. Issue writ in the nature of mandamus or any other appropriate writ, order or direction setting aside the impugned Show Cause Notice for Cancellation of Registration dated 10.02.2023.

e. Issue writ in the nature of mandamus or any other appropriate writ, order or direction setting aside the impugned Order for Cancellation of Registration dated 27.05.2023.

f. Issue writ in the nature of mandamus or any other appropriate writ, order or direction setting aside the impugned Show Cause Notice for Rejection of Revocation Application dated 27.02.2024.

g. Issue writ in the nature of mandamus or any other appropriate writ, order or direction setting aside the impugned Order for Rejection of Revocation Application dated 16.04.2024.

h. Issue a writ thereby declaring FORM GST REG-03 and FORM GST REG-05 as ultra vires the CGST Act, 2017 and the CGST Rules, 2017 to the extent that they travel beyond the provisions of Rule 9 of the CGST Rules, 2017 and direct the Respondents to accordingly amend the said statutory forms.”

4. The petitioner is an individual carrying on business under the sole proprietorship concern namely ‘M/s. Saraswati Trading Company’. The petitioner states that the said concern is engaged in the business of trading of aluminium waste, paring and scrap plastic falling under HSN 7601, 7602, 7604 and 3915. The petitioner was duly registered under Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) and was assigned Goods



and Services Tax Identification Number (GSTIN) – 07DFEPR5978L1ZJ. The certificate of registration has not been placed on record, however, learned counsel appearing for the petitioner submits that the petitioner obtained the registration with effect from 28.11.2019.

5. The petitioner filed an application dated 09.10.2022 for cancellation of its GST registration with effect from 01.10.2022. However, it is conceded that the said application was uploaded on the GST portal on 01.12.2022. Pursuant to the said application, the respondents issued a notice dated 13.12.2022, *inter alia*, stating that the petitioner's application was examined and the proper officer was not satisfied with the same. The reason stated for being dissatisfied are reproduced below:

“Cancellation Details- Others (Please specify) – PLEASE SUBMIT RECONCILIATION TAX DUE (GSTR1) AND TAX PAID (GSTR3B), DETAILS OF LATE PAYMENT THROUGH CASH, IF ANY, RECONCILIATION OF ITC AVAILABLE AS PER GSTR-2A AND ITC AVAILED IN GSTR-3B FROM REGISTRATION TO TILL DATE, UPLOAD COPY OF ELECTRICITY BILL AADHAR, PAN AND LATEST RENT AGREEMENT. IF ANY DUES ARE PAID, PROVIDE COPY OF DRC 03 ALSO PROVIDE THE PROOF OF FUTURE PLACE OF CORRESPONDENCE. Kindly provide the ITR of the last three years and Bank Statement. Reasons of non/delay in filing of return.”

6. The petitioner was called upon to submit a reply by 21.12.2022. The petitioner did not submit a reply and consequently, the petitioner's application for cancellation of its GST registration was rejected by the impugned rejection order dated 16.01.2023.

7. Thereafter, the proper officer issued the impugned Show Cause



Notice (SCN) dated 10.02.2023 calling upon the petitioner to show cause why its GST registration not be cancelled. The only reason set out in the impugned SCN dated 10.02.2023 proposing cancellation of the petitioner's registration reads as under:-

“In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts.”

8. The petitioner was called upon to furnish a reply to the impugned SCN dated 10.02.2023 within a period of seven working days and was also directed to appear before the proper officer on 17.02.2023 at 04:00 PM. Additionally, the petitioner's GST registration was suspended with effect from 10.02.2023. The petitioner did not respond to the said impugned SCN dated 10.02.2023 and the petitioner's GST registration was thereafter cancelled by an order dated 27.05.2023 (hereafter *the impugned cancellation order*).

9. The petitioner applied for revocation of the impugned cancellation order by filing an application dated 31.10.2023. The petitioner also sought condonation of delay in filing the revocation application, which was allowed by an order dated 14.02.2024.

10. Thereafter on 27.02.2024, the proper officer issued the impugned SCN dated 27.02.2024 calling upon the petitioner to show cause why its revocation of cancellation of registration application not be rejected. The reasons for the same, as set out in the said SCN, are reproduced below:

“Reason for revocation of cancellation – Others (Please specify) – Please submit KYC documents along with Rent Agreement and NOC from Land lord. NOC from ANti Evasion of CGST Delhi North.”

11. The petitioner was called upon to submit a response to the said notice



within a period of seven working days and also to appear before the proper officer on 01.03.2024. The petitioner did not respond to the impugned SCN dated 27.02.2024 as well.

12. In view of the above, petitioner's application for revocation of impugned cancellation order was rejected by an order dated 16.04.2024 (*the impugned rejection order*).

13. The petitioner is not aggrieved by the cancellation of its GST registration, however, the petitioner is aggrieved by the same being cancelled retrospectively with effect from 29.11.2019. The learned counsel appearing on behalf of the petitioner submits that the petitioner's registration be cancelled with effect from 01.10.2022 and not from a date prior to that.

14. The petitioner's request for cancellation of his GST registration, in terms of its application dated 09.10.2022, was withheld for the reasons that the petitioner had not furnished the his reconciliation statement of tax due (Form GSTR 1) and tax paid (Form GSTR 3B). The proper officer called upon the petitioner to submit documents, however, it is noticed that the said documents were in respect of assessing the petitioner's liability.

15. It is settled law that cancellation of GST registration does not affect the taxpayer's liability under relevant enactments. It also does not preclude the concerned authority from initiating proceedings for any statutory violation or for recovery of dues from the taxpayer.

16. Considering that the petitioner has stopped carrying on its business, the petitioner's application for cancellation of his GST registration is required to be allowed. However, the petitioner is required to furnish the documents evidencing its address for future correspondence and KYC documents, to the satisfaction of the proper officer.



17. In view of the above, we consider it apposite to direct the proper officer to reconsider the petitioner's application for cancellation of its GST registration with effect from 01.10.2022.

18. The petitioner shall, within a period of two weeks from date, furnish documents evidencing its future correspondence address as well as KYC documents. The proper officer, if satisfied with the same, shall proceed to allow the petitioner's application.

19. It is clarified that the same would not absolve the petitioner from its liability to pay taxes, if any, or be accountable for statutory violations, if any. The concerned authority is also not precluded from initiating any proceedings for statutory violation or for assessing and recovering any amount due from the petitioner.

20. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 09, 2024

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