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

% *Date of Decision : 14.08.2024*

\+ **W.P.(C) 11307/2024 & CM APPL. 46857-58/2024**

ALAKNANDA STEEL THROUGH ITS PROPRIETOR MR.RAJESH GARG

.....Petitioner

Through: Mr Rakesh Kumar and Mr Parveen Kumar Gambhir, Advocates.

versus

COMMISSIONER OF DELHI GOODS AND SERVICES TAX AND ANR

.....Respondents

Through: Mr.Rajeev Aggarwal, ASC and Mr.Shubham Goel, Advocate.
Mr.Avishkar Singhvi ASC, Mr.Shubham Kumar Mr.Vivek Kumar Singh and Mr.Naved Ahmed Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (***ORAL***)

1. Issue notice.

2. The learned counsel for the respondents accepts notice.

3. The petitioner has filed the present petition, *inter alia,* impugning an order dated 09.06.2023 whereby the petitioner's application for the cancellation of his GST registration was rejected. The petitioner also

impugns the show cause notice (hereafter *the impugned SCN*) issued on the same date, that is on 09.06.2023, calling upon the petitioner to show cause as to why its GST registration not be cancelled and the order dated 30.06.2023 (hereafter *the impugned cancellation order*) was passed pursuant to the impugned SCN. In terms of the impugned cancellation order, the petitioner's GST registration was cancelled *ab initio*.

4. The petitioner was registered with GST authorities and was assigned the Goods and Services Tax Identification Number (GSTIN): No.07AAMPG7549L1Z4 with effect from 01.07.2017. The petitioner claims that he discontinued his business and accordingly made an application for cancellation of his GST registration with effect from 20.05.2023.

5. Pursuant to the aforesaid application, the proper officer issued the notice dated 23.05.2024 calling upon the petitioner to provide the reconciliation statement in respect of his returns; upload the proof of permanent future address; furnish the undertaking that he would pay the GST dues and liabilities in future; and confirm that no inquiry was pending against the petitioner. In addition, the petitioner was also asked to make his firm "Aadhaar Authenticated".

6. Thereafter, the petitioner's application for cancellation of its GST registration dated 20.05.2023 was rejected by the impugned order. However, on the same date of the impugned order, the proper office issued the impugned SCN stating that the petitioner's GST registration was liable to be cancelled for the following reasons:-

> "1 Rule 21(e)-person avails ITC in violation of the provisions of section 16 of the Act or the rules

made thereunder"

7. The petitioner was called upon to furnish a reply to the impugned SCN within the period of seven working days from the date of service of the impugned SCN and was also directed to appear before the concerned proper officer at an appointed date and time. However, no date or time was indicated in the impugned SCN. Additionally, the petitioner's GST registration was also suspended with effect from 09.06.2023.

8. Thereafter, the proper officer issued the impugned order and cancelled the petitioner's GST registration with retrospective effect from 01.07.2017.

9. The reasons for cancellation as set out in the impugned order are identical to that as stated in the impugned SCN.

10. The petitioner also states that in the similar fashion, the petitioner's GST registration was cancelled on an earlier occasion by an order dated 07.07.2020. The petitioner had applied for the revocation of cancellation of his GST registration which was restored by an order dated 02.09.2022.

11. Since, the petitioner states that he has discontinued his business, subject to verifying the correctness of the aforesaid assertion, his GST registration is liable to be cancelled.

12. We find no fault with the proper officer in demanding the documents for future correspondence. However, the petitioner's application for cancellation of his GST registration cannot be withheld on account of any proceedings for assessing his GST liability. This is because

notwithstanding, the cancellation of tax payer's GST registration, it would continue to be liable for all the statutory compliances prior to the date of the cancellation and is not absolved from its liability to pay the statutory dues as may be assessed.

13. As is apparent from the above, the petitioner is not aggrieved by the cancellation of his GST registration. He is essentially aggrieved by the cancellation of his GST registration with retrospective effect. It is material to note that the impugned SCN did not propose for the cancellation of the petitioner's GST registration with retrospective effect. The impugned order also does not reflect any such reason.

14. It is also important to note that although the impugned SCN called the petitioner to appear for a personal hearing, but no date and time was communicated for the same.

15. As is apparent from the tenor of the impugned SCN, it is cryptic and does not contain any specific details of the allegations. It merely refers to the statutory provision – Rule 21(e) of the Central Goods and Services Tax Rules, 2017 – without providing any clue as to any transaction alleged to have resulted in wrongful availment of the Input Tax Credit (ITC). The purpose of issuing a show cause notice is to enable the notice to respond to the allegation on the basis of which an adverse action is proposed. It is a fundamental principle of natural justice that a person must not be condemned unheard. He must have an opportunity to meet the allegations as set out against him. The impugned SCN fails to satisfy the requisite standard of such a notice.

16. The impugned SCN does not propose for the cancellation of the petitioner's GST registration with retrospective effect. Thus, the petitioner had no opportunity to contest pursuant to the passing of any such order. Thus, on this ground alone, the impugned cancellation order is liable to be set aside. Additionally, the petitioner was not provided any opportunity to be heard as no date or time for the personal hearing was communicated to the petitioner.

17. It is apparent that the impugned cancellation order has been passed in violation of the principles of natural justice. However, since the petitioner also seeks for the cancellation of his GST registration, we consider it apposite to direct that the impugned cancellation order shall be operative prospectively, that is, from 09.06.2023 being the date of the impugned SCN, and not retrospectively from 01.07.2017.

18. We clarify that this order will not preclude the concerned authorities from initiating any proceedings for statutory violations or proceedings for the cancellation of the petitioner's GST registration with retrospective effect, subject to the same being done in accordance with law.

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

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

AUGUST 14, 2024

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Click here to check corrigendum, if any