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

% ***Date of Decision: 21.08.2024***

\+ **<u>W.P.(C) 11492/2024</u>**

SURESH CHAND GUPTA PROPRIETOR OF GUPTA AND ASSOCIATES .....Petitioner

Through: Mr. Karan Aggarwal and Mr. Dipak Raj, Advs.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Mr. Vinish Phogat, Adv. for R-1.

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

<u>VIBHU BAKHRU, J.</u>

1. Issue notice.

2. Learned counsel for the respondent accepts notice.

3. The petitioner has filed the present petition impugning a Show Cause Notice dated 19.05.2023 (hereafter *the impugned SCN*) whereby the petitioner was called upon to show cause as to why its GST registration not be cancelled. The petitioner also impugns an order dated 20.06.2023 (hereafter *the impugned cancellation order*) passed pursuant to the impugned SCN whereby the petitioner's GST registration was cancelled with effect from 24.07.2019.

4. The only reason set out in the impugned SCN for proposing to cancel the petitioner's GST registration reads as under:

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

5. The petitioner was called upon to file a reply within a period of seven working days from the receipt of the impugned SCN and appear before the proper officer on 25.05.2023. Additionally, the petitioner's GST registration was suspended with effect from 19.05.2023.

6. As is apparent from the above, the impugned SCN is cryptic and does not clearly set out the reasons as to why the petitioner's GST registration was proposed to be cancelled. It merely reproduces the statutory provision – Section 29(2)(e) of the CGST Act, 2017 – which enables the proper officer to cancel the tax payer's GST registration if it is obtained by means of fraud, wilful mistreatment or suppression of facts.

7. The impugned SCN does not set out the details of the nature of the alleged fraud. It also does not indicate the statement which is alleged to be wilfully misstated or any fact, which is alleged to have been suppressed.

8. The purpose of a show cause notice is to enable the noticee to respond to the allegations made against him. It is a fundamental principle of natural justice that a person cannot be condemned unheard. He must have full opportunity to respond to the allegations before any adverse order is passed on the basis of those allegations.

9. In the present case, the impugned SCN fails to meet the requisite standards of a show cause notice.

10. The impugned cancellation order also does not indicate any reason for cancelling the petitioner's GST registration. It merely states that the same is in reference to the impugned SCN. It is also important to note that the petitioner's GST registration was cancelled with retrospective effect from 24.07.2019. However, no such action was proposed in the impugned SCN.

11. It is apparent that the impugned cancellation order has been passed in violation of the principles of natural justice and therefore, is liable to be set aside.

12. It is material to note that the petitioner had also applied for revocation of the impugned cancellation order on 06.07.2023. Pursuant to the aforesaid application, the proper officer had issued another Show Cause Notice dated 21.07.2023 (hereafter *the SCN*) setting out various other reasons for cancellation of the petitioner's GST registration. The SCN once again alleged that the petitioner's GST registration was cancelled on the basis of fraud and wilful misstatement. However, it also stated that the petitioner had availed ineligible credit of ₹18,87,503.33 received from a non-existent firm M/s Gunjan Traders. It is apparent that this allegation was made pursuant to a letter received from another officer who stated that no business activity was found during the physical verification.

13. The petitioner is alleged to have passed on Input Tax Credit (ITC) amounting to ₹90,12,574/- and therefore was called upon to produce documents e.g. bank statements, ITC ledger, E-Way bills, invoices to verify the genuineness of the supplies received and made.

14. The petitioner responded to the SCN on 06.07.2023. However, the petitioner's application for revocation of the impugned cancellation order was rejected by an order dated 05.06.2024 on the ground that the replies submitted by the petitioner were not found to be satisfactory.

15. The reasons as set out in the aforesaid SCN were repeated.

16. The reply furnished by the petitioner is not on record. However, the petitioner has placed screenshots of the portal indicating that he had sent the reply. He states that he was unable to reply to the SCN on account of his

illness. The petitioner has also annexed the proof of his medical condition.

17. It is apparent from the above that there are allegations against the petitioner for availing ITC from a non-existing firm and wrongfully passing of the input tax credit. It is also alleged that the petitioner is non-functional. However, none of these allegations find mention in the SCN.

18. In view of the above, we set aside the impugned cancellation order and direct that the petitioner's GST registration be restored forthwith. However, we also clarify that this would not preclude the proper officer from initiating fresh proceedings for cancellation of the petitioner's GST registration in accordance with law.

19. The respondents are also not precluded to initiate any proceedings against the petitioner, if warranted, for any statutory non-compliance or for recovery of any dues, *albeit,* in accordance with law.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 21, 2024/cl