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

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Date of Decision : 28.08.2024

+ **W.P.(C) 11804/2024 & CM APPL. 49054/2024**

M/S BANSAL EXIM

.....Petitioner

Through: Mr M A Ansari and Ms Tabbassum
Firdause, Advocates.

versus

COMMISSIONER OF DGST, DELHI AND ORSRespondents

Through: Mr Udit Malik, ASC and Mr Vishal
Chanda, Advocate for GNCTD.**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 respondents accepts notice.
3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 04.07.2024 (hereafter *the impugned order*), whereby the petitioner's appeal filed under Section 107 of the Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*) against an order dated 07.11.2023 rejecting the petitioner's application for revocation of cancellation order dated 16.02.2023 (hereafter *the impugned cancellation order*), was rejected.
4. The petitioner was registered under the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) with effect from 01.07.2017 and



was allocated the Goods and Services Tax Identification Number (GSTIN) :07AHGPB5674C1ZM.

5. Apparently, the petitioner failed to furnish the returns for a continuous period of six months. In view of the above, the proper officer issued the Show Cause Notice dated 13.01.2023 (hereafter *the impugned SCN*) calling upon the petitioner to show cause as to why the petitioner's GST registration not be cancelled on account failure to furnish the returns for a continuous period of six months. The petitioner was directed to furnish a reply within a period of thirty days from the date of the service of the impugned SCN and was also directed to appear before the proper officer on 10.02.2023 at 11:00. Additionally, the petitioner's GST registration was suspended from the date of the impugned SCN, that is, with effect from 13.01.2023.

6. The petitioner did not respond to the impugned SCN.

7. In view of the above, the petitioner's GST registration was cancelled by the impugned cancellation order, *albeit* with retrospective effect from 01.07.2017. Apart from referring to the impugned SCN, the impugned cancellation order does not mention any other reason for its issuance.

8. The petitioner filed an application dated 15.03.2023 seeking revocation of the impugned cancellation order, which was rejected by an order dated 07.11.2023. The petitioner preferred an appeal against the impugned cancellation order, which was rejected by the impugned order, since it was filed beyond the period of three months.

9. It is the petitioner's case that he had failed to file the returns as he was unwell. However, the petitioner is now ready to furnish the GST returns.



10. The learned counsel for the respondents contests the said submission. He states that the petitioner had not filed returns for a period of over two years. He states that returns for the period of the year 2021 were filed after the issuance of the impugned SCN.

11. It is material to note that the impugned SCN did not propose the cancellation of the petitioner's GST registration with retrospective effect. Thus, the petitioner had no opportunity to contest such cancellation. The impugned cancellation order also does not set out any reasons for cancelling of the petitioner's GST registration *ab initio*, that is, from the date of grant of such registration.

12. Section 29(2) of the CGST Act/the DGST Act expressly empowers the proper officer to cancel the GST registration including with retrospective effect if any of the conditions as set out in the said provision are satisfied. However, it is settled law that such an exercise is to be informed by reasons and the tax payer's registration cannot be cancelled retrospectively whimsically or arbitrarily. It is required to be based on some cogent reasons. In the present case, the impugned cancellation order does not reflect any such reasons.

13. We are also of the view that the cancellation of the petitioner's GST registration with retrospective effect is in violation of the principles of natural justice as no such adverse action was contemplated in the impugned SCN.

14. The cancellation of GST registration has severe and adverse consequences for the tax payer. Undisputedly, any tax payer cannot run its business in the absence of a GST registration.



15. In *TVL. Suguna Cutpiece Center v. Appellate Deputy Commissioner (ST) (GST), SALEM: 2022 (61) G.S.T.L. 515 (Mad.)*, the Madras High Court had taken a view that since the cancellation of GST registration affects a person's fundamental right, an opportunity must be granted to the tax payer to remedy the cause of such cancellation. This Court has also taken a similar view in *Rakesh Enterprises v. The Principal Commissioner Central Goods and Services Tax and Ors.: W.P.(C) No. 14250/2022 decided on 09.02.2023*.

16. In the given circumstances, we consider it apposite to direct the respondents to restore the petitioner's GST registration for a period of thirty days to enable the petitioner to file its returns. In the event, the petitioner does so, the proper officer may consider whether any other action is necessary. If the proper officer considers that the same is warranted, he is not precluded from issuance of a fresh show cause notice and take a decision afresh after affording the petitioner an opportunity of personal hearing. We clarify that this order also does not preclude the concerned officer from taking such further action for any statutory violation, as may be warranted in accordance with law.

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

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 28, 2024/M

Click here to check corrigendum, if any