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

% *Date of Decision : 02.09.2024*

\+ **W.P.(C) 12122/2024 & CM APPL. 50448/2024**

M/S. GURUJI ENTERPRISES .....Petitioner

Through: Mr Sumit K Batra, Mr Manish Khurana, Ms Priyanka Jindal, Mr Nikhin Alex, Mr Siddhant Sarwal, Advocates.

versus

PRINCIPAL COMMISSIONER DELHI GOODS AND SERVICES TAX & ORS. .....Respondents

Through: Mr.Rajeev Aggarwal, ASC and Mr.Shubham Goel, Advocate.

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 10.05.2022 (hereafter *the impugned cancellation order*) passed by respondent no.2, whereby the petitioner's Goods and Services Tax (GST) registration was cancelled with retrospective effect from 01.07.2017. The petitioner also impugns the Show Cause Notice dated 02.12.2021 (hereafter *the impugned SCN*) pursuant to which the impugned cancellation order was

passed.

4. The petitioner states that it is a registered partnership firm and was registered under the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) and the Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*). The petitioner was assigned the Goods and Services Tax Identification Number (GSTIN) – 07AAMFG9272A1ZC.

5. The petitioner claims that its business suffered on account of the outbreak of COVID-19 and the petitioner was constrained to close down its business with effect from 30.11.2020. Thereafter, on 08.02.2021, the petitioner filed an application for cancellation of its GST registration with effect from 30.11.2020 on account of the fact that it has closed down its business.

6. Respondent no. 3 issued the show cause notice dated 09.02.2021 seeking additional information/clarification/documents. Amongst other documents, the proper officer sought the copy of balance sheet, profit and loss statement, bank statement, statement of input and sale register, stock register, reconciliation statement of input and output GST. In addition, respondent no. 3 also called upon the petitioner to file all its GST returns. The petitioner was also asked to provide identity proof and address proof of the partners as well as the principal place of business.

7. The petitioner claims that it responded to the said notice and furnished certain documents. However, the petitioner's application for cancellation of its GST registration was rejected by an order dated 20.02.2021.

8. Thereafter, the proper officer issued the impugned SCN and called upon the petitioner to show cause why its registration be not cancelled. The only reason stated in the impugned SCN was that the petitioner had failed to furnish returns for a continuous period of six months. The petitioner was directed to file its response to the impugned SCN within the 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 01.01.2022 at 11.00 hours. Additionally, the petitioner's GST registration was suspended with effect from the date of the impugned SCN – 02.12.2021.

9. As noted above, the petitioner's GST registration was cancelled with retrospective effect from 01.07.2017 by the impugned cancellation order. The said order does not indicate any reason for cancelling the petitioner's GST registration with retrospective effect. The impugned cancellation order except referring to the impugned SCN, does not mention any reason at all.

10. The impugned SCN did not propose any adverse action of cancelling the petitioner's GST registration *ab initio,* that is, from the date when it was granted.

11. There is no cavil that in terms of Section 29(2) of the CGST Act/DGST Act, the proper officer may cancel the tax payer's registration if any of the grounds as set out in the said provision are satisfied. This also includes the power of the proper officer to cancel the GST registration with retrospective effect. However, such an action cannot be arbitrary or whimsical. It must be informed by reasons. The proper officer must have cogent reason to cancel the tax payer's registration with retrospective effect.

12. In view of the above, we find that the impugned cancellation order was passed not only in violation of the principles of natural justice, but is also not informed by reasons. Thus, the impugned cancellation order is liable to be set aside.

13. Having stated the above, we also note that the petitioner had also requested cancellation of its GST registration with effect from 30.11.2020 on the ground that it has closed down its business. The said request was not granted on the basis that the proper officer was not satisfied by the information as provided by the petitioner.

14. It is also relevant to note that cancellation of a tax payer's GST registration does not absolve the tax payer from being held accountable for any statutory non-compliance or absolves it from any liability under the statute. The respondents are also not precluded from proceeding against the tax payer for the statutory non-compliance or payment of any dues notwithstanding it's GST registration has been cancelled.

15. In view of the above, we consider it apposite to direct that the impugned cancellation order will not be operative from 01.07.2017, but with effect from 08.02.2021 being the date on which the petitioner had applied for cancellation of its GST registration. We were inclined to direct that the cancellation of the petitioner's GST registration shall be operative with effect from 30.11.2020 as the petitioner has closed down its business. However, Mr. Aggarwal, the learned counsel for the respondents points out such an application was required to be made within the period of one month from the date of the closure of the business and the petitioner had made the

application beyond the period of thirty days from closing down its business. Thus, the petitioner would be liable to furnish his returns till 08.02.2021.

16. We also clarify that the respondents are not precluded from initiating any fresh proceedings for any statutory non-compliance for recovery of any dues, if the same are warranted, in accordance with law.

17. The petitioner shall provide the address(es) of all the partners for future correspondences and proceedings, if any, to the respondents. The above order is operative subject to the petitioner's complying with the aforesaid direction.

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

19. Pending application also stands disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 02, 2024
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Click here to check corrigendum, if any