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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 19.09.2024

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W.P.(C) 12255/2024 and CM APPL. 50939/2024 (Stay)**SUBHANA FASHION**

.....Petitioner

Through: Mr. Pulkit Verma, Mr. Upender Sah
and Mr. Peyush Pruthi, Advs.

versus

COMMISSIONER DELHI GOODS AND SERVICE TAX

.....Respondent

Through: Mr. Rajeev Aggarwal, ASC and Mr.
Shubham Goel, Adv.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition impugning an order dated 02.06.2022 (hereafter *the impugned order*) whereby the petitioner's GST registration was cancelled with retrospective effect from 01.07.2017. The impugned order was issued pursuant to a Show Cause Notice dated 03.09.2021 (hereafter the *SCN*), whereby the petitioner was called upon to show cause why its GST registration not be cancelled. The only reason set out in the SCN for proposing to cancel the petitioner's GST registration reads as under:

“Fails to pay any amount of tax, interest or penalty to the account of the Central/State Government beyond a period of three months from the date on which such payment becomes due.”

2. The petitioner was called upon to furnish a reply to the SCN within a



period of seven days from the date of service of the SCN. The petitioner was also put to notice that if he failed to furnish a reply or appear for a personal hearing on the appointed date and time, the case would be decided *ex parte* on the basis of available records on merits. However, the SCN did not mention any appointed date or time fixed for personal hearing. Additionally, the petitioner's GST registration was suspended with effect from the date of the SCN – that is with effect from 03.09.2021.

3. The petitioner's GST registration was subsequently cancelled by the impugned order.

4. The impugned order does not reflect any reason for cancelling the petitioner's GST registration. However, it refers to the SCN dated 03.09.2021.

5. The only question that requires to be considered is whether cancellation of the petitioner's GST registration is warranted for the reason as set out in the SCN.

6. As noted above, the only reason set out in the said SCN for proposing to cancel the petitioner's GST registration is failure to pay tax, interest or penalty within a period of three months from the date on which the said amount became due.

7. However, that is not one of the reasons available under Section 29 of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) for cancellation of a tax payer's GST registration.

8. Section 29 (1) and (2) of the CGST Act are relevant and are set out below:

“29. Cancellation [or suspension] of registration,- (1) The proper officer may, either on his own motion or on an application



filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,-

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person, is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25:

[Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.]

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished [the return for a financial year beyond three months from the due date of furnishing the said return]; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for [such continuous tax period as may prescribed]; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts.”

9. It is also relevant to refer to Rule 21 of the Central Goods and Services Rules, 2017 (*CGST Rules*), which sets out the grounds on which



the registration granted to a tax payer may be cancelled. The said Rule is set out below:

“21. Registration to be cancelled in certain cases.-The registration granted to a person is liable to be cancelled, if the said person,-

- (a) does not conduct any business from the declared place of business; or
- (b) issues invoice or bill without supply of goods or services [or both] in violation of the provisions of the Act, or the rules made thereunder; or
- (c) violates the provisions of section 171 of the Act or the rules made thereunder.
- (d) violates the provision of rule 10A
- (e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or
- (f) furnishes the details of outward supplies in **FORM GSTR-1** under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or
- (g) violates the provision of rule 86B.
- (h) being a registered person required to file return under proviso to sub-section (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months;
- (i) being a registered person required to file return under proviso to sub-section (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.”

10. It is apparent to note that non-payment of dues for a period of three months is not a prescribed ground for cancelling the petitioner’s GST registration.

11. It is also important to note that the impugned order sets out a tabular statement, which indicates that no amount has been determined as payable by the petitioner. The Central Tax, State Tax, Integrated Tax and Cess



payable by the petitioner is reflected as, “0.0”.

12. Apart from the above, the impugned order has also been passed in violation of principles of natural justice. Although the SCN called upon the petitioner to appear for a personal hearing at the appointed date and time, no such date or time was indicated. Thus, in effect the petitioner was not afforded an opportunity to be heard.

13. In view of the above, we set aside the impugned order. The respondents are directed to restore the petitioner’s GST registration forthwith.

14. We, however, clarify this would not preclude the respondents from initiating any proceedings for recovery of dues or for any statutory non-compliances *albeit* in accordance with law.

15. The present petition is disposed of in the aforesaid terms.

16. Pending application is also stands disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 19, 2024/cl