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

% *Date of Decision : 09.09.2024*

\+ **W.P.(C) 12621/2024 & CM APPL. 52436/2024**

M/S PIHU ENTERPRISES
.....Petitioner
Through: Mr Pranay Jain and Mr. Karan Singh, Advocates.

versus

PRINCIPAL COMMISSIONER OF DEPARTMENT OF TRADE AND TAXES GNCTD
.....Respondent
Through: Mr.Rajeev Aggarwal, ASC Mr.Shubham Goel and Mr Mayank Kamra, Advocates.

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 respondent accepts notice.

3. The petitioner has filed the present petition, *inter alia,* praying that directions be issued to the respondent to cancel its Goods and Services Tax (GST) registration. The petitioner also impugns the order dated 06.08.2024, whereby the petitioner's application for cancellation of its GST registration was rejected.

4. The petitioner was registered under the Central Goods and Services Tax Act, 2017/ Delhi Goods and Services Tax Act, 2017 (hereafter *the CGST Act/ DGST Act*) with effect from 16.10.2023 and was assigned the Goods and Services Tax Identification Number (GSTIN): 07CLRPD5781K1ZH.

5. The petitioner claims that it has closed down its business and, therefore, made an application dated 27.07.2024 for cancellation of its GST registration. The said application was rejected by an order dated 06.08.2024 on the ground that the petitioner has availed Input Tax Credit (ITC) from certain suppliers that were found to be non-existent. The proper officer had reasoned that since tax had not been paid to the Government, the ITC availed by the petitioner, was required to be paid to the Government. Based on said premise, the application of the petitioner for cancellation of its GST registration was rejected.

6. The petitioner once again filed the application dated 28.08.2024 seeking cancellation of its GST registration with effect from 28.08.2024. It apprehends that this application would also suffer the same fate.

7. It is apparent from the above that the petitioner's request for seeking cancellation of its GST registration was withheld on account of certain proceedings initiated for the assessment of the petitioner's liability.

8. It is well settled that cancellation of the tax payer's registration does not absolve the tax payer from being held accountable for any statutory violations prior to the date of the cancellation.

9. It is also apposite to clarify that in certain cases, the proper officer may proceed to pass orders under Section 29 of the CGST Act and DGST Act for cancellation of the GST registration with retrospective effect, if there are reasons do so, notwithstanding that the taxpayer has requested for cancellation of its GST registration with effect from another date. Mr Aggarwal, the learned counsel for the respondent rightly points out that in cases where the tax prayer has been found to be non-existent, the said action may be warranted.

10. It is also relevant to refer to the circular dated 26.10.2018 issued by the Central Board of Indirect Taxes and Customs, whereby it was, *inter alia,* clarified as under: -

> "5. Since the cancellation of registration has no effect on the liability of the taxpayer for any acts of commission/omission committed before or after the date of cancellation, the proper officer should accept all such applications within a period of 30 days from the date of filing the application, except in the following circumstances:
> a) The application in **FORM GST REG-16** is incomplete, i.e. where all the relevant particulars, as detailed in para 4 above, have not been entered;
> b) In case of transfer, merger or amalgamation of business, the new entity in which the applicant proposes to amalgamate or merge has not got registered with the tax authority before submission of the application for cancellation.
> In all cases other than those listed at (a) and (b) above, the application for cancellation of registration should be immediately accepted by the proper officer and the order for cancellation should be issued in **FORM GST REG-19** with the effective date of cancellation being the same as the

> date from which the applicant has sought cancellation in **FORM GST REG-16**. In any case the effective date cannot be a date earlier to the date of application for the same."

11. In view of above, we consider it apposite to direct the respondent to consider the petitioner's application seeking cancellation of its GST registration bearing in mind that the cancellation ought not to be withheld on account of any assessment proceedings or any proceedings for recovery of any statutory dues from the tax payers. It is so directed.

12. The petitioner shall ensure that the address for future correspondence is filed with the proper officer along with KYC documents.

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

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 09, 2024
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Click here to check corrigendum, if any