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

% ***Date of Decision: 20.09.2024***

\+ **W.P.(C) 13239/2024 &CM APPL. 55294/2024**

UJJWAL GARG .....Petitioner

Through: Mr. Bhwesh Bhola and Mr. Sahil Mongia, Advocates.

versus

COMMISSIONER, DEPARTMENT OF TRADE AND TAXES, GOVT. OF NCT OF DELHI AND ANR. .....Respondents

Through: Advocate (appearance not given).

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

VIBHU BAKHRU, J.

1. Issue notice.

2. The learned counsel appearing for the respondents accepts notice.

3. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "i. Allow the present petition and issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to restore the GST registration of the Petitioner under the trade name of "*Shri Salasar Balaji Steel*" bearing GSTIN registration no. 07AZTPG3566F1Z2 forthwith; and
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> ii. Direct the Respondent authorities to confirm compliance by the Petitioner of the Show Cause Notice and take all necessary steps to restore the Petitioner's GST status without any further delay"

4. The petitioner was registered under the Central Goods and Services

Tax Act, 2017 (hereafter *the CGST Act*)/ the Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*) and was assigned the Goods and Services Tax Identification Number (GSTIN): 07AZTPG3566F1Z2.

5. The proper officer issued a Show Cause Notice dated 14.08.2024 (hereafter *the SCN*) proposing to cancel the petitioner's GST registration. The only reason set out in the SCN reads as under:

> "Rule 21(g)-person violates the provision of rule 86B"

6. The petitioner was directed to file a reply to the SCN within a period of seven working days. He was also called upon to appear before the concerned proper officer on 27.08.2024 at 12:00 PM. Additionally, the petitioner's GST registration was suspended with effect from date of the SCN, that is, with effect from 14.08.2024.

7. The petitioner responded to the SCN and enclosed a *challan* reflecting payment of a sum of ₹80,000/-. As is apparent from the above, the SCN is economical in explanation of the reasons for proposing to cancel the petitioner's registration. However, the SCN does refer to the provisions of Rule 86B of the Central Goods and Services Tax Rules, 2017 (hereafter *the CGST Rules*)/ the Delhi Goods and Services Tax Rules, 2017 (hereafter *the DGST Rules*). The said rule is set out below:-

> "**86-B**. Restrictions on use of amount available in electronic credit ledger -Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:
>
> Provided that the said restriction shall not apply where—

(a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under sub-section (1) of Section 139 of the said Act has expired; or

(b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of Section 54; or

(c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of Section 54; or

(d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or

(e) the registered person is—

(i) Government Department; or
(ii) a Public Sector Undertaking; or
(iii) a local authority; or
(iv) a statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit."

8. In terms of Rule 86B of the CGST Rules/the DGST Rules, a registered taxpayer cannot use input tax credit (ITC) available in the

electronic credit ledger for discharge of its entire liability towards the outward supplies. The taxpayer's utilisation of ITC for the aforesaid purpose is confined to a maximum of 99% of its liability towards output supply. Accordingly, the petitioner deposited a sum of ₹80,000/-. The petitioner contends that with the deposit of the said amount, it has satisfied the requirement of paying at least 1% of its liability on outward supplies.

9. The learned counsel appearing for the respondents submits that the petitioner has deposited the amount by way of a *challan* and not by filing the requisite form, that is, FORMDRC-03. He also submits that the suspension of the petitioner's GST registration cannot be revoked in view of the petitioner firm's name being included in a list of fake firms.

10. Insofar as the payment of 1% of liability on outward supplies is concerned, the petitioner would ensure that it deposits the amount under the relevant form or furnishes the necessary forms for duly recording the payment of tax against its liability within a period of two working days from date. Insofar as the allegation that the petitioner's name is included in the list of fake firms is concerned, there is no allegation to the said effect in the SCN. Thus, clearly, the same cannot be a ground for continuing to suspend the petitioner's GST registration.

11. It is necessary to bear in mind that suspension of a taxpayer's GST registration has wide adverse ramifications for the business of the taxpayer. Thus, such an action can be taken only after due consideration. Since, the only allegation in the SCN is that the petitioner has not complied with Rule 86B of the CGST Rules/DGST Rules, which in effect stands remedied by deposit of the amount of ₹80,000/- with the Revenue, we consider it apposite to allow the present petition and direct the respondents to forthwith restore

the petitioner's GST registration.

12. We, however, clarify that this order would not preclude the respondents from initiating any proceedings or taking action for any statutory violation, including for cancellation of the petitioner's GST registration, or for recovery of dues, if any, in accordance of law.

13. The present petition is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 20, 2024
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