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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 16 October 2024
Judgment pronounced on: 23 October 2024

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W.P.(C) 13450/2024

RAM NIWAS

.....Petitioner

Through: Mr. Sumit K. Batra, Mr. Manish
 Khurana, Ms. Priyanka Jindal
 and Mr. Siddhanth Sarwal, Advs.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICES
 TAX & ANR

.....Respondents

Through: Mr. Akshay Amritanshu, Sr. SC
 along with Mr. Samyak Jain, Ms.
 Drishti Saraf and Ms. Pragya
 Upadhyay, Advocates.

CORAM:**HON'BLE MR. JUSTICE YASHWANT VARMA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****J U D G M E N T****RAVINDER DUDEJA, J.**

1. The present writ petition has been filed impugning the Show Cause Notices ['SCNs'] dated 06.02.2024, 07.08.2024 and the respective orders dated 25.05.2024 and 27.08.2024.

2. The petitioner is the proprietor of M/s Maha Kuber Garments, having principal place of business at Raghubar Pura, Gandhi Nagar, Delhi. The petitioner was registered under the Goods and Service Tax law.



2024:DHC:8154-DB



3. In order to conduct enquiry in relation to non genuine tax-payers, as a part of special drive for verification of GSTINs, the officers of Anti Evasion, CGST visited the premises of the petitioner. During such visit at the registered address, petitioner was found non-existent.

4. A Show Cause Notice in Form GST REG-17 dated 06.02.2024 was issued, whereby the petitioner was asked to show cause why its GST registration should not be cancelled. The SCN stood framed in the following terms:

“Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1. AC(Anti-Evasion), CGST Delhi East vide letter C.No. GEXCOM/AE/VRFN/OTH/393/2023/5493 dated 28.12.23 has directed to this office to initiate the cancellation proceedings of M/s Maha Kuber Garments, GSTN No. 07ARNPN2317H1ZQ, being non-traceable at its PPOB. Accordingly, cancellation is initiated under Sec 29 of CGST Act, 2017 from retrospective date of registration.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

You are hereby directed to appear before the undersigned on 12/02/2024 at 05:00 PM.

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 06/02/2024.

Kindly refer the supportive document attached for case specific details.



2024:DHC:8154-DB



Place: Delhi
Date: 06/02/2024”

5. The registration ultimately came to be cancelled retrospectively w.e.f 02.09.2017 in terms of an order dated 25.05.2024, and which is being extracted herein below:

“Order for Cancellation of Registration

This has reference to show cause notice issued dated 06/02/2024.

The effective date of cancellation of your registration is 02/09/2017.

3. It may be noted that a registered person furnishing return under sub-section (1) of section 39 of the CGST Act, 2017 is required to furnish a final return in FORM GSTR-10 within three months of the date of this order.

4. You are required to furnish all your pending returns.

5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

Place: RANGE – 150
Date: 25/05/2024

Amreek Singh
Superintendent
Ward 78”

6. In terms of Section 29(2) of Central Goods and Services Tax Act, 2017 [‘CGST’], the proper officer may cancel the GST registration of a person from such date, including any retrospective date, as he deem fit, if the circumstances set out in the said section are satisfied. The



registration cannot be cancelled with retrospective effect. It can be cancelled only if the proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria.

7. We take note that the impugned SCN dated 06.02.2024 requires the petitioner to appear before the undersigned i.e authority issuing the notice. The notice however, does not give the name of the officer or the place where the petitioner was to appear.

8. The very foundation of the proceedings i.e. SCN dated 06.02.2024 is therefore defective. The principles of natural justice require the authorities to give opportunity to the persons/entity of hearing before passing an order. In this case, no effective opportunity for hearing was granted to the petitioner before passing the final order on the show cause notice. As per the Master Circular dated 10.03.2017 bearing no. F.No.96/1/2017 issued by the Ministry of Finance Department, Central Board of Excise and Customs, at least three opportunities of personal hearing should be given to the noticee with sufficient interval of time so that the noticee may avail the opportunity of being heard. The relevant extract of said circular is reproduced herein below:

“14.3 Personal Hearing: After having given a fair opportunity to the noticee for replying to the show cause notice, the adjudicating authority may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorised representative. At least three opportunities of personal hearing should be given with sufficient interval of time so that the noticee may avail opportunity of being heard. Separate communications should be made to the noticee for each opportunity of personal hearing. In fact separate letter for each hearing/extension should be issued at sufficient



interval. The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted more than three times to a noticee.”

9. The circular/instructions issued by the Department are binding on the departmental authorities. They cannot take a contrary stand and the Department cannot repudiate a circular even on the ground that it was inconsistent with the statutory provisions and thus, the effective right of being heard having been denied to the petitioner, the impugned order dated 06.02.2024 is violative of principles of natural justice.

10. The proper officer passed the impugned order dated 25.05.2024 cancelling the petitioner's GST registration with retrospective effect i.e 02.09.2017. The impugned order does not indicate any reason for cancelling the petitioner's GST registration much less from retrospective effect. The impugned order is bereft of any reason. It neither specifies the reasons for cancelling the GST registration nor gives any clue as to why it was cancelled w.e.f 02.09.2017. The retrospective cancellation of GST registration has a cascading effect inasmuch as the concerned authorities would also deny the input tax credit to other tax payers who might have received supplies from the petitioner herein. Dealing with an identical issue in the case of **Riddhi Siddhi Enterprises vs. Commissioner of Goods and Services Tax (CGST), South Delhi & Anr.** [W.P.C 8061/2024 dated 25 September 2024], we had held as under:

“5. As is manifest from a reading of Section 29, clauses (a) to (e) of Section 29(2) constitute independent limbs on the basis of which a registration may warrant cancellation. While the provision does enable the respondents to cancel that registration with retrospective effect, the mere existence or conferral of that power would not



justify a revocation of registration. The order under Section 29(2) must itself reflect the reasons which may have weighed upon the respondents to cancel registration with retrospective effect. Given the deleterious consequences which would ensue and accompany a retroactive cancellation makes it all the more vital that the order be reasoned and demonstrative of due application of mind. It is also necessary to observe that the mere existence of such a power would not in itself be sufficient to sustain its invocation. What we seek to emphasise is that the power to cancel retrospectively can neither be robotic nor routinely applied unless circumstances so warrant. When tested on the aforesaid precepts it becomes ex facie evident that the impugned order of cancellation cannot be sustained.”

11. In view of the aforesaid, we find that there has been an abject failure on the part of the concerned authorities to assign even rudimentary reasons for retrospective cancellation.

12. After the cancellation of registration, petitioner filed an application dated 08.07.2024 for revocation of cancellation of GST registration stating that its business was temporarily disrupted due to factors beyond its control including the health issues, financial distress and operational disturbance. However, the business activities have been resumed and the claim of non-existent entity at the registered place of registration is not correct.

13. Respondent no.2 issued yet another SCN dated 07.08.2024 whereby the petitioner was directed to show cause as to why its application for revocation of cancellation of registration dated 08.07.2024 should not be rejected for the reason that a demand of Rs.24,38,232/- proposed to be raised against the petitioner vide SCN No. 70/2024-25 dated 03.08.2024 is due and payable by the petitioner.

14. In response to the show cause notice, petitioner filed reply dated



16.08.2024. Notwithstanding such reply, the application for revocation for cancellation of registration was rejected. The impugned order dated 27.08.2024 is reproduced below:

“Order of Rejection of Application for Revocation of Cancellation

This has reference to your reply filed vide ARN AA0707240172891 dated 08/07/2024. The reply has been examined and the same has not been found to be satisfactory for the following reasons:

1. Reason for revocation of cancellation-Others (Please specify)- kindly deposit the demand penalty of Rs. 2438232/- against the SCN No.70/2024-25 issued under F. No. GEXCOM /AE / VRFN / Oth/ 393/2023/Mahakuber/4689 dt. 3.08.2024 issued by the Asstt. Commissioner (AE), CGST Delhi East, IP estate Delhi-02.
2. The taxpayer has not deposited the demanded amount of Rs. 2438232/- as pointed out in SCN no. 70/2024-25 dt. 03.08.2024 issued by AS(AE) CGST Delhi East. Further the taxpayer has also not joined the investigation carried out by Anti-Evasion branch therefore it is requested to get NOC from Investigating authority in their case.

Therefore, your application is rejected in accordance with the provisions of the Act.

Place : Delhi
Date : 27/08/2024

Amreek Singh
Superintendent
RANGE – 148”

15. However, and as we peruse the aforesaid order, we find that the order fails to allude to any material on the basis of which it had been originally alleged that petitioner was a non-existent entity at the principal place of business. Rather, the application for revocation of cancellation of registration has been rejected on an altogether different ground i.e non-payment of penalty of Rs. 24,38,232/- against SCN No. 70/2024-25 issued in Form GST DRC-01 dated 03.08.2024, which is



extracted below:-

“Summary of Show Cause Notice

1.	Tax Period	From: OCT/2017 To: OCT/2023
2.	Financial Year (s)	2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-2022, 2022-2023, 2023-2024
3.	Act	CGST ACT, 2017
4.	Section / Sub-section under which SCN is being issued	122
5.	SCN Reference No.	ZD070824012347F
6.	SCN Date	03/08/2024

(a) Brief facts of the Case:	AS PER SCN NO 70 DATED 03 08 2024 ALREADY SENT ON REGISTERED E MAIL ID OF THE TAXPAYER
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(b) Grounds:

Sl. No.	Grounds	Description of grounds
1	122(1)(ii): Issues invoice without supply in violation Act/Rules	AS PER SCN NO. 70/2024-25 DATED 03.08.2024 ALREADY SENT ON



		REGISTERED E MAIL ID OF THE TAXPAYER
2	122(1)(vii) Takes or utilises ITC without actual receipt of goods/ services	AS PER SCN NO. 70/2024- 25 DATED 03.08.2024 ALREADY SENT ON REGISTERED E MAIL ID OF THE TAXPAYER

16. Till date, SCN No. 70/2024-25 dated 03.08.2024 is pending adjudication. The demand has yet not been crystallized. Moreover, the proceedings under DRC-01 are independent of the proceedings for cancellation of GST registration and cannot be a ground for cancellation of GST registration or even for rejecting the application for revocation of cancellation of registration. The recovery of any amount, if found due, can always be made irrespective of the status of registration. The proper officer was required to satisfy himself as to the reasons for cancelling the petitioner's GST registration, while dealing with his application for revocation of cancellation of GST registration.

17. Since the only allegation against the petitioner was that it was non-existent, which was sufficiently addressed by the petitioner in his reply by claiming that the tax payer had to go to Rajasthan due to ill



2024:DHC:8154-DB



health of his father, and at the relevant time when visit was scheduled by the Department, the tax payer was travelling to Rajasthan and owing to this, the business place of the tax payer was closed and it was presumed that the tax payer is non-existent. The temporary suspension of business activity on account of ill health would not warrant cancellation of tax payer's GST registration. The impugned order dated 27.08.2024 is completely silent with regard to even any enquiry having been conducted on the aforesaid aspect.

18. In view of the above, both the impugned SCNs dated 06.02.2024 and 07.08.2024 as also the impugned orders dated 25.05.2024 and 27.08.2024 are set aside. Respondents are directed to restore the petitioner's GST registration. It is however clarified that the respondents are not precluded from taking any steps for the recovery of tax or penalty or initiating fresh action or continuing other proceedings that may be permissible in accordance with law and after affording the petitioner an opportunity to contest any such proposed action.

19. The petition is accordingly disposed of in the above terms.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

OCTOBER 23, 2024/ib