$~88

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

\+ W.P.(C) 1426/2025

PANKAJ MITTAL .....Petitioner

Through: Mr.Udit Bakshi, Mr.Bhwesh Bhola, and Ms.Urvashi Dhiman, Advocates

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX (CGST), DELHI NORTH .....Respondent

Through: Ms.Monica Benjamin, SSC

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% **04.02.2025**

CM APPL. No. 6941/2025 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 1426/2025

1. The petitioner is aggrieved by the order dated 30 December 2024 pursuant to which his application for voluntary cancellation of Goods & Services Tax ["**GST**"] registration has come to be rejected. That order assigns the following reasons for denying the prayer that was made:

> "1. Basic Details - Address for Future Correspondence - Others (Please specify) - The address of the registered premises mentioned on the portal is incomplete. Inspite of several request you failed to update the correct address. Please update your future address alongwith supporting documents.
>
> 2. Cancellation Details - Tax Details - Others (Please specify) - 1.

The reply of the ASMT—10 letter dated 15.10.2024 tax liability of Rs. 1,58,14,020/- alongwith applicable interest is still awaited. 2. You have not clarified or deposited the interest on the tax liability ofRs.3,1 1,30,590/- raised vide DRC- 01A dated 10.09.2024 so far.

Since the huge amount of govt revenue is pending, your application for cancellation of GST registration cannot be processed at this stage unless you clarify/deposit the pending tax liability alongwith the interest

3. Others - It is to inform that your application for cancellation of registration is rejected on the following reasons:-

1.(i). In respect of ASMT-10- you have availed ITC amounting to Rs. 1,58,14,020l- from the suppliers whose registration has been cancelled retrospectively. As per Section 16 of the CGST Act, 2017 that right to claim ITC is not absolute but subject to the fulfilment of the statutory conditions As per the clause 4c) of subsection 2 of section 16 of the said Act the Taxpayer can claim ITC contained in an invoice only when the tax associated with such invoice is paid to the Government either in cash or through utilisation of Input tax credit.

In the such case, you have availed and utilized the ITC on the strength of invoices issued by the cancelled suppliers. Since the registration of the taxpayers have been cancelled retrospectively, the tax associated with the such supplies, if any, have neither been paid in cash or through ITC.

(ii). you have not submitted any supporting documents in respect of supply of goods i.e. copy of relevant invoices, E-my bills, purchase ledger and Bank statements for the said purchase from the cancelled suppliers

2. on perusal of your ledger account, it has been noticed that you have availed excess ITC amount Rs.3,11,30,590/- and utilized. Hence, interest is applicable under section 50 of the CGST Act, 2017.

3. Further, on going through the scrutiny of your returns, it has also observed that you have violated Rule 86B of the CGST Act/Rules, 2017 and DRC-OIA dated 12.12.2024 was issued to you for payment of 1% ie amount of Rs.10,53,342/— of the Total tax of Rs.10,53,34,276.31/-.

Since the huge amount of govt. Revenue is pending from you, your application for cancellation of GST registration is rejected.

Further, you may file a fresh application after submitting DRC-03 or supporting documents."

2. Insofar as the provision of 'Basic Details' are concerned, we

find no ground to relieve the petitioner of providing the said particulars as have been required by the respondents. Similar would be the position which would obtain in respect of para 2.

3. That then takes us to the ground which stands comprised in Para 3.1.(i). In our considered opinion, as long as the petitioner was able to satisfy that the supplies were, in fact, obtained from suppliers who were registered at the relevant time and had discharged their corresponding tax liability, the mere fact that the registration of those suppliers came to be cancelled subsequently or with retrospective effect, would not be a reason germane for the purposes of examining the request for voluntary cancellation. This would, of course, be subject to due verification by the respondents.

4. However, and insofar as Para 3.1.(ii) and Para 3.3 are concerned, we are of the opinion that the petitioner must necessarily respond and comply with the demands which have been raised subject to such assertions in law or fact as may be taken.

5. Consequently, we direct the writ petitioner to furnish a response in terms indicated above for the consideration of the competent authority of the respondents within a period of three weeks from today. The application seeking voluntary cancellation may be taken up for consideration thereafter.

6. The writ petition stands disposed of on the above terms.

YASHWANT VARMA, J

HARISH VAIDYANATHAN SHANKAR, J

FEBRUARY 4, 2025/SV