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

% *Date of Decision: 02.08.2022*

+ **W.P.(C) 8508/2022**

ADITYA NARAYAN OJHA (AMIT ASSOCIATES)..... Petitioner

Through: Mr Karan Sachdev with Mr Akshay Ravi,
Advocates

versus

PRINCIPAL COMMISSIONER, CGST, DELHI

NORTH & ANR.

..... Respondents

Through: Mr Akash Vajpai, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J (ORAL):

1. The principal grievance of the petitioner is that the Order-in-Appeal [in short "OIA"] dated 07.01.2022 has not been complied with by the respondents/revenue.

1.1. *Via* the aforesaid order, the appellate authority has revoked the order by which the petitioner's GST registration was cancelled.

2. We may note that the order, *via* which the GST registration of the petitioner was cancelled, is dated 10.10.2021. The said order, in turn, is predicated on the show-cause notice (SCN) dated 28.09.2021

2.1. In the SCN, the proposal to cancel the petitioner's registration was premised on the following:

"In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts."

2.2. *Via* the SCN, the petitioner was granted seven (7) working days to respond

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i.e., present its defence. Besides this, the SCN also indicated the date and time when its representative would be heard in support of its stand.

2.3. Concededly, the petitioner neither filed a reply, nor did anyone appear before the concerned officer.

2.4. Strangely, the order cancelling the registration dated 10.10.2021 alludes to a reply dated 07.10.2021, when none was filed by the petitioner, as is evident on perusal of the counter-affidavit filed by the respondents/revenue.

2.5. Thereafter, as noticed above, the petitioner's registration was cancelled *via* order dated 10.10.2021.

2.6. Thus, being aggrieved, the petitioner preferred an appeal. The first appellate authority, as noticed above, reversed the order dated 10.10.2021. The reasoning put forth by the first appellate authority reads as follows:

*"5.4 Now I take up for consideration the plea made by the Appellant for revocation of their cancelled registration; **what is to be examined is whether sufficient cause exists for revocation of cancellation of registration. The Appellant has stated that he is Proprietor of firm M/s Amit Associates. The Appellant vide letter dated 31.12.2021 has submitted Undertaking stating that they had filed GST returns till September 2021 along with tax amount, shall file pending returns with tax within 15 days of restoration of GST registration along with interest, shall pay any other government dues if found subsequently under the GST Act. I observe that the default by the Appellant was not wilful. There is also an Undertaking of the Appellant on record to make the payment of pending taxes and filing of pending returns. The law also permits revocation of cancellation of registration on sufficient cause being shown; the cause shown by the Appellant is sufficient to allow revocation of cancellation of registration.***

5.4.1 Further, I also refer to the Central Board of Indirect Taxes & Customs, New Delhi Circular No. 99/18/2019-GST, dated 23-4-2019, wherein at Para 3 of said circular it has been clarified that:

"3. First proviso to sub-rule (1) of rule 23 of the said Rules provides that if the registration has been cancelled on account of failure of the registered person to furnish returns, no application for revocation of cancellation of registration shall be filed, unless such returns are furnished

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and any amount in terms of such returns is paid. Thus where the registration has been cancelled with effect from the date of order of cancellation of registration, all returns due till the date of such cancellation are required to be furnished before the application for revocation can be filed. Further, in such cases, in terms of the second proviso to sub-rule (1) of rule 23 of the said Rules, all returns required to be furnished in respect of the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of thirty days from the date of the order of revocation.”

5.4.2 The Appellant has submitted relevant documents like copy of aadhar card of the appellant along with bank passbook, photographs of the premises and surroundings, rent agreement of place of business, NOC by the owner of the property to carry out business activities, electricity bills & copy of property documents, copies of GSTR-3B till September'2021 86 relevant sales & purchase invoices, I find that the appellant is registered at the address "2377 & 2384, 1st Floor, Gali Ghanta Kakwan, Farash Khana, G.B Road, Delhi-110006" and carrying out its business activities from the said address as alleged by the Adjudicating Authority of the Principal Place of Business of the Appellant and therefore, I hold that contention of the Adjudicating Authority is not sustainable.”

[Emphasis is ours]

3. It is in this backdrop i.e., on account of the OIA dated 07.01.2022 not being complied with (as alluded to hereinabove), that the petitioner has approached this Court.

4. In the first instance, the matter was listed before the Court on 27.05.2022, when we had, after capturing the grievance of the petitioner, issued notice in the matter.

4.1. On that date, Mr Akash Vajpai, had accepted notice on behalf of the respondents/revenue. Accordingly, Mr Vajpai was directed to return with instructions, as to why OIA dated 07.01.2022, had not been given effect to.

4.2. Thereafter, the matter was listed in Court on 02.06.2022. On the said

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date, Mr Vajpai had indicated to us that a decision had been taken by the respondents/revenue to prefer an appeal against the OIA dated 07.01.2022.

4.3. However, given the fact that the Appellate Tribunal under the Goods and Services Tax Act, 2017 [hereafter referred to as “GST Act”] had not been constituted, we granted liberty to the respondents/revenue to file a writ petition.

4.4. Mr Vajpai informs us that, in line with the liberty given by the Court, a communication dated 15.07.2022 was addressed to the Principal Chief Commissioner, CGST-Delhi Zone by the Additional Commissioner of CGST-Delhi (North Commissionerate).

4.5. Sadly, since then, Mr Vajpai informs us, there has been no movement in the matter.

5. Mr Karan Sachdev, who appears on behalf of the petitioner, says that the delay is causing immense detriment to the petitioner. It is submitted that without GST registration, the petitioner is neither able to carry on its business nor is in a position to make statutory compliances.

5.1. Furthermore, Mr Sachdev says a perusal of the order of cancellation [i.e., order dated 10.10.2021], would show that even on the date when the petitioner’s registration was cancelled, nothing was owed by the petitioner towards tax, interest and/or penalty.

5.2. In any event, according to Mr Sachdev, the petitioner has given an undertaking, as recorded in the OIA dated 07.01.2022, to the effect, that if there is any outstanding tax liability, the same will be liquidated.

5.3. On being queried, Mr Sachdev stated that no notice of physical inspection was served on the petitioner. Mr Sachdev says that the inspection of the petitioner’s premises (and the finding that the petitioner was not in existence at the said premises) was the prime reason, based on which the respondents/revenue proceeded, it appears, to cancel the petitioner’s registration; although, the said reason does not find mention in the order dated

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10.10.2021.

5.4. This reason, according to Mr Sachdev, is embedded in the counter-affidavit filed on behalf of the respondents/revenue. Mr Sachdev, thus, emphasizes that the counter-affidavit cannot improve upon the order dated 10.10.2021.

6. We are in agreement with the contention advanced on behalf of the petitioner. The order dated 10.10.2021 does not advert the aforesaid reason, which now finds a place in the counter-affidavit filed on behalf of the respondents/revenue.

6.1. In particular, there is no reference in the order dated 10.10.2021 to the fact that the petitioner was not found to be in existence and therefore, registration was cancelled.

6.2. The only reason adverted to in the order dated 10.10.2021 is: “*No response received from the taxpayer's end*”

7. It cannot but be accepted that under Rule 25 of the Central Goods and Services Tax Rules, 2017, before carrying out physical inspection, the respondents/revenue are required to serve a notice on the concerned person/entity. However, as noticed above, all this did not form part of the order dated 10.10.2021.

7.1. Furthermore, the first appellate authority has given a rationale for revoking the order cancelling the petitioner's GST registration; as noted hereinabove.

8. In the given circumstances, we find no good reason not to direct the respondents/revenue to comply with the OIA.

8.1. The respondents/revenue, at this juncture, have no other alternative, but to comply with the order of the first appellate authority, given the fact that they have taken no steps to approach this Court, despite liberty having been given, in that behalf, on 02.06.2022.

9. Accordingly, the writ petition is disposed of with a direction that the

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respondents/revenue shall restore the petitioner's GST registration.

9.1. The restoration will be carried out within one week from the date of receipt of a copy of this judgement.

10. The parties will act based on the digitally signed copy of the judgement.

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RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

AUGUST 2, 2022/pmc

Click here to check corrigendum, if any