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

+ **W.P.(C) 16388/2022 & CM No.51463/2022**

M/S. KPM ENTERPRISES Petitioner
Through: Ms Anjali Jha Manish and Ms
Divya Rastogi, Advocates.

Versus

THE COMMISSIONER, DELHI GOODS
AND SERVICE TAX & ORS. Respondents
Through: Mr. Satyakam, Adv. for R-1
to 3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

ORDER
29.11.2022

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1. Issue notice.
2. Mr Satyakam, learned counsel appearing for the respondents, accepts notice.
3. With the consent of the counsel parties, the petition has been taken up for final hearing.
4. The petitioner has filed the present petition, *inter alia*, impugning an order dated 02.11.2022 passed by the respondent, whereby the petitioner's registration (Reference No. ZA0711220062349) under the Goods and Services Tax Act (GST



Act) was cancelled with effect from 09.09.2022. The petitioner also impugns a show-cause notice dated 27.09.2022 issued by the respondents whereby the petitioner's registration was suspended with effect from the said date, that is, 27.09.2022.

5. The petitioner was registered under the GST Act on 09.09.2022 and a Registration Certificate (Certificate No.07DGMPM1441Q2ZT) was issued.

6. The petitioner claims that it commenced its business of trading in betel nuts and placed an order to a supplier located in the State of Karnataka (M/s G.G. Agencies). It is claimed that M/s G.G. Agencies, Karnataka had supplied 350 bags of areca nuts weighing 24,500 kgs at a total consideration of ₹72,03,000/- which included a taxable value of ₹68,60,000/- and IGST amount of ₹3,43,000/- (5% of the taxable value). It is stated that the said goods were seized by the Assistant Commissioner-II, Circle-F, Jaipur at Bhagru Ajmer Road, Jaipur. Apparently, this was done as the concerned officer found it suspicious. The reasons why he found it so are unclear. The petitioner has challenged the said action which is pending before the High Court of Rajasthan in Jaipur.

7. It is stated that in furtherance of the said action, the concerned Officer from Jaipur had visited Delhi and with the aid of the respondents, conducted an alleged inspection on the premises of the petitioner on 27.09.2022.

8. According to the respondent, there was no establishment at the said address and the petitioner was not functional. The field visit



report (GST RG-30) was prepared. However, the same has not been uploaded. It is also conceded that no photographs were taken and no intimation was served on the petitioner prior to the inspection.

9. The said inspection triggered the impugned show-cause notice and suspension of the petitioner's registration. In terms of the impugned show-cause notice, the petitioner was called upon to show-cause as to why its GST registration should not be cancelled, for the reason that "*taxpayer found non-functioning/not existing at the principal place of business*". Thereafter, the respondent issued the impugned order cancelling the registration, although no demand has been raised.

10. The learned counsel appearing for the petitioner has referred to Rule 25 of the Central Goods and Services Rules, 2017 (hereafter '2017 Rules'). The said Rule is set out below:

"25. Physical verification of business premises in certain cases. – Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification."

11. She submits that the alleged inspection, is in violation of the Rule 25 of the 2017 Rules as the petitioner was not afforded any



opportunity to be present at the site. Further, the respondent has also not uploaded any photographs as required.

12. Mr Satyakam, learned counsel appearing for the respondents fairly states that although the petitioner ought to have been given an opportunity of hearing before the impugned order cancelling the registration was made and the same may be set aside; he contests that the show-cause notice can be impugned. He submits that even though Rule 25 of the 2017 Rules was not strictly followed the petitioner can be afforded an opportunity to contest the same. The impugned show-cause notice was issued to afford the petitioner an opportunity to present its case as to why the registration should not be cancelled. He submitted that all contentions including that Rule 25 of the 2017 Rules was not followed, would be available to the petitioner.

13. This Court is unable to accept that the impugned show-cause notice can be sustained, considering that it is clear that it is premised on an alleged inspection that was carried contrary to the 2017 Rules. This court had also enquired whether any photographs were taken at the time of the inspection as required; Mr Satyakam has, after obtaining instructions, responded in the negative.

14. In view of the above, the petition is allowed and the impugned show-cause notice as well as the impugned order is set aside.

15. The respondent would be at liberty to make further inquiries as it considers fit in accordance with law, and in the event the respondent is of the view that the petitioner is not carrying on any



business and is not functional, it would be at liberty to issue a fresh show-cause notice fairly setting out the reasons for the same and to proceed in accordance with law.

16. It is clarified that nothing stated in this order shall be construed as an expression of the opinion as to whether the petitioner was carrying on the business as on that date.

17. All rights and contentions of the parties are reserved.

18. The petition is disposed of in the aforesaid terms. The pending applications is also disposed of.

VIBHU BAKHRU, J

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 29, 2022

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