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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 15129/2022 & CM Nos.46787/2022**
M/S BANSAL SURINDER AND CO. THROUGH PROPRIETOR
DEEPAK BANSAL Petitioner

Through: Mr Puneet Agarwal, Ms Hemlata
Rawat, Mr Rishabh Mishra & Mr
Chetan Kumar Shukla, Advs.

versus

COMMISSIONER, DEPARTMENT OF
TRADE AND TAXES/GST (STATE) & ORS. Respondents

Through: Mr Rajeev Aggarwal, ASC with Mr
Ankit Gupta, Adv.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

% **02.11.2022**

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

CM Nos.46788/2022

1. Allowed, subject to the appellant filing legible copies of the annexures, at least three days before the next date of hearing.

W.P.(C) 15129/2022

2. This writ petition is *inter alia*, directed against the order-in-appeal dated 09.09.2022.

3. In sum, *via* the aforesaid order, the appeal preferred by the petitioner against the order cancelling its GST Registration was dismissed on the ground that it was time-barred.

4. Mr Puneet Agarwal, who appears on behalf of the petitioner, says that both the show cause notice dated 01.10.2021 [see Annexure P/7] and the

W.P.(C) 15129/2022

page 1 of 7

order cancelling the petitioner's registration dated 28.12.2021 [see Annexure P/9] were not embedded with the requisite jurisdictional facts. In this connection, our attention has been drawn to both the aforementioned show-cause notice dated 01.10.2021, as well as the order cancelling the petitioner's GST registration dated 28.12.2021.

5. Furthermore, it is Mr Puneet Agarwal's contention that the cancelation of registration, perhaps, is predicated, on the following:

(i) Firstly, that the returns were not furnished, as required under Section 39 of the Central Goods and Service Tax Act, 2017 [in short, "Act"].

(ii) Secondly, outward supply details were furnished in FORM GSTR-1.

6. Besides this, Mr Agarwal submits that insofar as petitioner is concerned, he has filed returns till June 2021. It is averred that the returns which were missing, prior to the issuance of the order dated 28.12.2021 whereby, as noticed above, the petitioner's registration was cancelled, were returns for the months of July, August, September, October and November, 2021.

7. It is, therefore, Mr Agarwal's contention that, if, as it appears, the petitioner's registration has been cancelled for not filing returns, the cancellation could only have been ordered if the petitioner had not furnished returns for a continuous period of six months. In this context, our attention has been drawn to Section 29(2)(c) of the Act.

8. In sum, it is Mr Puneet Agarwal's contention that prior to the issuance of order dated 28.12.2021 i.e., the order cancelling the registration, the petitioner was in default for only five months and not six months, as is the requirement under Section 29(2)(c) of the Act for triggering cancellation of

the registration.

9. We may note that the show-cause notice dated 01.10.2021, to say the very least, in parts, is incomprehensible. This is evident from a plain reading of the show-cause notice, extracted below:

“Reference Number: ZA0710210016283 Date: 01/10/2021

To

Registration Number (GSTIN/Unique ID):

07AKCPB3186C1ZO

DEEPAK BANSAL

201/8, SUSHMA TOWER, CENTRAL MARKET, D-

BLOCK, PRASHANT VIHAR, North West

Delhi, Delhi, 110085

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. returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017*
- 2. outwards supplies details furnished by you in FORM GSTR-1*

Observations

No 3b filed but R1 has been filed

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

You are hereby directed to appear before the undersigned on 05/10/2021 at 11:00

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 01/10/2021

Date: 01/10/2021

Ashwani

*Sales Tax Officer Class II / AVATO
Ward 63:Zone 6:Delhi”*

[Emphasis is ours]

10. Similarly, a perusal of the order dated 28.12.2021 shows that there is no application of mind. For the sake of convenience, the said order is extracted hereafter:

“To

DEEPAK BANSAL

*201/8, SUSHMA TOWER, CENTRAL MARKET, D-BLOCK,
PRASHANT VIHAR, North West Delhi, Delhi, 110085*

GSTIN/ UIN :07AKCPB3186C1ZO

Application Reference No. (ARN): AA0710210002661

Dated: 01/10/2021

Order for Cancellation of Registration

This has reference to your reply dated 01/11/2021 in response to the notice to show cause dated 01/10/2021 Whereas no reply to notice to show cause has been submitted;

The effective date of cancellation of your registration is 11/07/2017

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and as is thereof is as follows:

The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before 07/01/2022 failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

<i>Head</i>	<i>Central Tax</i>	<i>State Tax/UT Tax</i>	<i>Integrated Tax</i>	<i>Cess</i>
<i>Tax</i>	0	0	0	0
<i>Interest</i>	0	0	0	0
<i>Penalty</i>	0	0	0	0
<i>Others</i>	0	0	0	0
<i>Total</i>	0.0	0.0	0.0	0.0

Place:

Date :28/12/2021

*Ashwani
Sales Tax Officer Class II / AVATO
Ward 63”*

[Emphasis is ours]

11. A plain reading of the show-cause notice shows that it actually does not crystallize the reason for cancelling the registration. Under the heading, observations, there is a reference to the following:

“No 3b filed but R1 has been filed”

11.1. As would be apparent from the above extract, firstly, the description of the full form has not been given.

11.2. Furthermore, in the very same show-cause notice, above the heading observations, what is sought to be projected as reasons are hardly reasons, as these are mere statements of fact rather than *prima facie* reasons for issuance of the show-cause notice.

12. Besides this, the show-cause notice dated 01.10.2021 appears to give the petitioner 30 days, commencing from the date of service of the notice, to submit a reply, whereas the petitioner was asked to appear before the

concerned officer on 05.10.2021 at 11:00 AM.

14. Likewise, the order dated 28.12.2021, as noted above, it appears, has been passed without due application of mind.

14.1. The petitioner, concededly, did not file a reply to the show-cause notice. There is, however, a reference to a reply dated 01.11.2021 in the first line of the order dated 28.12.2021. This observation is followed by another observation which indicates that no reply to the show-cause notice was submitted by the petitioner.

14.2. As is obvious, order cancelling the registration i.e., the order dated 28.12.2021 is a cut and paste job. There has been no application of mind either while framing the show-cause notice or while passing the order of cancellation of registration.

15. We may also note that the order of cancellation is made effective retrospectively i.e., from 11.07.2017, whereas, the aforementioned show-cause notice, contains no such proposal. Therefore, clearly, the order cancelling the registration is beyond what was proposed in the show-cause notice (if otherwise, one were to treat it as a show-cause notice which is comprehensible).

16. We may observe that the petitioner has also not covered himself with glory. As adverted to above, the petitioner neither filed a reply to the show-cause notice nor did it's authorized representative appear before the concerned officer. This litigation could have been avoided if the petitioner had taken the necessary steps to protect its interests.

16.1. The procrastination on the part of the petitioner got compounded in the appeal being filed well beyond the time prescribed under the Act.

17. That being said, the argument advanced before us is that the flaws noticed in the abovementioned show-cause notice and order cancelling the petitioner's GST registration are so fundamental that they cannot be sustained.

18. In these kind of cases where registration is cancelled, our broad view is that it is in the interest of revenue to keep tax payers within the GST regime and therefore, ordinarily, orders cancelling registration do not serve the purpose of the Act, which is, to collect as much legit revenue as is possible.

19. Given the aforesaid, we would request Mr Rajeev Aggarwal, who appears on behalf of the respondents/revenue, to return with instructions as to whether, having regard to the fact that the petitioner is a professional chartered accountancy concern, the order cancelling the registration could be recalled on terms and conditions deemed fit by the respondents/revenue.

20. Mr Rajeev Aggarwal says that he will return with instructions.

21. In the meanwhile, we are also inclined to issue formal notice to the respondents.

22. Issue notice to the respondents.

22.1. Mr Rajeev Aggarwal accepts notice on behalf of the respondents.

23. In case instructions are received to resist the writ petition, a counter-affidavit will be filed before the next date of hearing.

24. List the matter on 05.12.2022.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

NOVEMBER 2, 2022/r

W.P.(C) 15129/2022

[Click here to check corrigendum, if any](#)

page 7 of 7