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

% *Date of Decision: 11th December, 2023*

+ **W.P.(C) 15433/2023**

CUTHBERT WINNER LLP Petitioner

Through: Mr. Aditya Kaumar, Mr. Tarun
Chawla, Mr. Pravesh
Bahuguna, Ms. Priyanka
Chawla, Advs.

versus

THE ASSISTANT COMMISSIONER OF CGST & ANR.

..... Respondents

Through: Mr. Harpreet Singh, Sr.
Standing Counsel with Ms.
Suhani Mathur & Mr. Jatin
Kumar Gaur, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

CM APPL. 61898/2023 (for exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner has filed the present petition, *inter alia*, praying as under:

“(a) To direct the respondent No 1 to decide the Application for Revocation cancellation of Registration on 02.08.2023 vide ARN No AA070823005582D by Petitioner;



- (b) To direct the respondent to provide the details for the difference in ITC as per GSTR 3B and ITC accrued as per GSTR 2A;*
- (c) To direct the respondent to restore the GST registration of the petitioner;*
- (d) pass such other order or orders as may be deemed fit and proper in the interest of justice.”*

4. The petitioner is essentially aggrieved by the cancellation of its GST registration. The petitioner's registration was cancelled in terms of an order dated 25.07.2023, which was passed pursuant to a Show Cause Notice ('SCN' in short) dated 02.06.2023.

5. In terms of the SCN dated 02.06.2023, the Proper Officer had proposed to cancel the petitioner's registration on the ground that it was found to be non-existent at its registered address. The petitioner was called upon to respond to the said notice within a period of seven working days, and also appear before the concerned officer on 09.06.2023. Additionally, the petitioner's GST registration was suspended with effect from the date of SCN, that is, with effect from 02.06.2023.

6. It is material to note that prior to the issuance of SCN, the petitioner had made an application dated 08.04.2023 to reflect the change of its principal place of business in the GST records. Pursuant to the said application, the concerned officer had issued a notice dated 20.04.2023, demanding proof of the new address. It had thereafter, proceeded to reject the said application by an order dated 01.05.2023 as the query remained unfulfilled.

7. It is apparent from communication issued by the respondent that



certain officers of the Directorate of Revenue Intelligence ('DRI') had visited the petitioner's previous principal place of business on 25.04.2023, and had not found the petitioner present at the said premises. It appears that the SCN dated 02.06.2023 issued thereafter, proposing to cancel the petitioner's GST registration, was triggered by the information received from the officials of the DRI.

8. According to the petitioner, since it had already changed the principal place of business on 08.04.2023, it was not functioning from the said premises that were visited by the officials on 25.04.2023. The order dated 25.07.2023 cancelling the petitioner's GST registration is founded on the premise that the petitioner was non-existent at its principal place of business.

9. In the aforesaid circumstances, on 02.08.2023, the petitioner applied for revocation of the cancellation order dated 25.07.2023. Pursuant to the said application, the concerned officer issued a SCN dated 18.08.2023, proposing to reject the petitioner's application for revocation of the cancellation order dated 25.07.2023, for the following reasons:

"1. Reason for revocation of cancellation- Others (Please specify) - The taxpayer was found non-operational at their PPOB i.e. Level-2, Elegance, Old Mathura Road, Jasola, New Delhi-110025, during visit made by the official of DRI Ludhiana Zonal Unit on 25.04.2023 and hence, as per direction of DRI, Ludhiana Zonal Unit, vide their letter, the GST registration was cancelled on 25.07.2023.

2 Any Supporting Document- Others (Please specify)- you have shifted at new address i.e. 2nd floor, 44, Regal Building, Outer Circle, New Delhi-110001, but, not provided any supporting documents/details in r/o new address. Please upload proper rent agreement along with ownership proof and owner KYC details.



3 Any Supporting Document- Document Upload- Document not legible.”

10. It is apparent from the above that the Proper Officer had sought further evidence from the petitioner to establish that he had shifted its principal place of business.

11. Mr. Harpreet Singh, learned Senior Standing Counsel for the respondents, submits that even prior to application on 08.04.2023, the petitioner had applied for change of address in the year 2022, which was rejected.

12. The petitioner responded to the SCN dated 02.08.2023 by furnishing further information regarding the change of its principal place of business. Notwithstanding the same, the petitioner's application for revocation of the cancellation order dated 25.11.2023 has not been decided. Instead, the Proper Officer has issued a further communication dated 04.09.2023 seeking reconciliation of the difference between the Input Tax Credit claimed under the return (GSTR-3B) and the Input Tax Credit as reflected in the return (GSTR-2A) for the financial years 2020-2021 to 2023-2024.

13. As apparent from the above, discrepancy in the Input Tax Credit claimed by the petitioner was not the ground on which the petitioner's GST registration was cancelled. The petitioner claims that it is handicapped in responding to the communication dated 04.09.2003, and reconciling the Input Tax Credit Claim for more than three financial years, in absence of full access to its GST Portal. This access is unavailable as the petitioner's GST registration has been cancelled with retrospective effect.



14. In view of above, we consider it apposite to direct that the concerned officer shall decide the petitioner's application for revocation of the cancellation order after examining all aspects as to whether the petitioner was existent at its principal place of business at the material time.

15. We request the Proper Officer to conclude proceedings in this regard as expeditiously as possible, and in any event within a period of six weeks from the date. This would necessarily entail examination in regard to the period prior to the petitioner applying for a change in its registered place of business as well. If the Proper Officer finds that the petitioner was existent at its principal place of business prior to the petitioner applying for change of the same, the petitioner's GST registration would be restored forthwith without any delay.

16. In addition, we also consider it apposite to direct the respondents to supply copies of all returns and information as filed by the petitioner to enable the petitioner to respond to the communication dated 04.09.2023.

17. The writ petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 11, 2023

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