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

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*Date of Decision: 11<sup>th</sup> December, 2023*

+ **W.P.(C) 15846/2023**

SANT RAM

..... Petitioner

Through: Mr. Harpreet Singh, Mr. Saurabh Grover & Ms. Suhani Mathur, Advs.

versus

DELHI STATE GST & ORS.

..... Respondents

Through: Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**VIBHU BAKHRU, J. (Oral)**

**CM APPL. 63790/2023 (for exemption)**

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

**W.P.(C) 15846/2023**

3. The petitioner has filed the present petition, impugning a Show Cause Notice dated 19.09.2022 (hereafter '**the impugned SCN**'), whereby the respondents had proposed to cancel the petitioner's GST registration for the following reasons:

*"1. Letter received from Deputy Commissioner, (A.E)vide letter no. 13553 dt 16.09.2022."*



4. The petitioner was called upon to file the reply within seven working days from the date of service of the impugned SCN and was also directed to appear before the Proper Officer on 27.09.2022. Additionally, the petitioner's GST registration was suspended with effect from the date of the impugned SCN.

5. The petitioner's GST registration was, thereafter, cancelled by an order dated 11.07.2023 (hereafter '**impugned order**'), with retrospective effect from 30.11.2020. The reasons for the cancellation as set out in the said order read as: "*Others*".

6. Mr. Aggarwal, learned counsel appearing for the respondents, states that the petitioner had, thereafter, made an application for revocation of the impugned order, cancelling the petitioner's GST registration. However, the same is not decided as yet.

7. It is clear that the impugned order, is unsustainable, as it is not informed by reasons.

8. This Court has passed a number of orders, including order dated 20.10.2023 in **W.P.(C) 13941/2023**, captioned as ***Green Polymers v. Union of India & Ors.***, setting aside such orders.

9. Section 29 of the Central Goods and Services Tax Act, 2017 ('**CGST Act**') enables a Proper Officer to cancel a dealer's GST registration in certain circumstances. Sub-section (1) of Section 29 of the CGST Act set out the circumstances in which a taxpayer's GST registration can be cancelled. Sub-section (2) of Section 29 of the CGST Act specify the circumstances in which the registration can be cancelled from such date, including with retrospective effect, as the proper officer considers fit. The



said sub-sections (1) and (2) are set below:

**“29. Cancellation or suspension of registration-**

*(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,--*

*(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or*

*(b) there is any change in the constitution of the business; or*

*(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25.*

*Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed*

*(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,--*

*(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or*

*(b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or*

*(c) any registered person, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed; or*

*(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or*

*(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:*

*Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.*

*Provided further that during pendency of the proceedings relating to*



*cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.”*

10. It is apparent from the above that the Proper Officer may cancel the GST registration only if there are circumstances as set out in Section 29(1) or (2) of the CGST Act. The Proper Officer can also do so, with retrospective effect, if he deems fit where the conditions specified in Section 29(2) of the CGST Act are satisfied.

11. It is, thus, necessary for the Proper Officer to independently arrive at a satisfaction as to the circumstances as set out in Section 29(1) or 29(2) of the CGST Act.

12. In the present case, it is noticed that the impugned SCN was issued solely on the basis of a letter received from another authority. The said letter is neither attached to the impugned SCN nor does the impugned SCN refer to the contents thereon.

13. The impugned order, as stated above, does not indicate that the Proper Officer was satisfied as to any of the conditions as set out in Section 29(1) or 29(2) of the CGST Act.

14. The Courts in *Sirpur Paper Mills Ltd. v. The Commissioner of Wealth Tax, Hyderabad: (1970) 1 SCC 795*, *Union of India & Ors. v. Bharat Forge Ltd. & Anr.: 2022 SCC OnLine SC 1018* and *Kritika Agarwal v. Union of India & Ors., Neutral Citation No. 2023: DHC:5001-DB*, had held that the Proper Officer who is entrusted with discretion has to independently exercise the same. He cannot act mechanically on the instructions of another authority.



15. In view of the above, the present petition is allowed. The impugned order, cancelling the petitioner's GST registration, is set aside and the respondents are directed to forthwith restore the same.

16. It is clarified that the respondents are not precluded from taking any further steps in accordance with law if they find any statutory violations on the part of the petitioner.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**DECEMBER 11, 2023**

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