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2023:DHC:5001-DB

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

% *Date of Decision: 18.07.2023*

\+ **W.P.(C) 9424/2023 and CM Nos. 36000/2023 & 36001/2023**

KRITIKA AGARWAL ..... Petitioner
Through: Mr. Deepak Kumar Sharma & Mr. Rajnish Verma, Advs.

versus

UNION OF INDIA AND ORS. ..... Respondents
Through: Mr. Rishabh Sahu & Mr. Sameer Sharma, Advs. for R-1.
Mr. Atul Tripathi & Mr. Amresh Kr, Advs. for R-2&3.
Mr. Harpreet Singh, SSC with Mr. Awnesh Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

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

> "a) this Hon'ble Court be pleased to set aside the SCN dated 06.10.2022, the OIO dated 28.10.2022 cancelling the registration of the Petitioner and the impugned order-in-appeal dated 30.05.2023;
>
> b) this Hon'ble Court may be pleased to direct the CGST Authorities to refund an amount of Rs. 20,00,000/- (Rs. Twenty lacs), deposited during the course of visit and investigation;

c) this Hon'ble Court be pleased to issue a writ of mandamus or a writ/direction in the nature of mandamus or any other appropriate writ, direction or order thereby directing the Respondents to restore the registration of the Petitioner immediately;

d) for ad-interim reliefs in terms of prayer (b) above;

e) for costs of this Petition and orders thereon;"

2. The petitioner is, essentially, aggrieved by the cancellation of her GST Registration. The petitioner has also sought a refund of ₹20,00,000 (Rupees twenty lacs only), which she claims was not deposited voluntarily against any demand, but under the pressure as exerted by the respondent authorities. However, the learned counsel for the petitioner states that the petitioner does not wish to seek any relief in regard to the deposit, aggregating to ₹20,00,000/- as sought in the petition at this stage. The petitioner, however, seeks to reserve her rights for availing appropriate remedies in this regard at a later stage, if necessary.

3. In view of the above, the present petition is confined to the petitioner's challenge to the Order-in-Original dated 28.10.2022, whereby the petitioner's GST registration was cancelled, and the Order-in-Appeal dated 30.05.2023, whereby the petitioner's appeal against the Order-in-Original dated 28.10.2022 was rejected.

4. The petitioner states that she is engaged in the business of import and distribution of various types of chemicals, minerals and lubricant preparations falling under Chapters 27 and 34 of the schedule to the Customs Tariff Act, 1975. She claims that she has been carrying on the

said business in the name and style of a sole proprietorship concern 'Vivaan International' since, prior to the rollout of the GST Regime on 01.07.2017 and was registered as a dealer under the Delhi Value Added Tax Act, 2004.

5. The petitioner states that on 07.09.2022, the Anti Evasion Staff of Central Tax CGST, Delhi North Commissionerate visited and searched her premises. She claims that they also took possession of a few documents from her premises without drawing any *panchnama*. She claims that she was not present during the course of the search but her father-in-law (Sh. Ashok Kumar Jain), who was present at the premises at the material time, was compelled to tender a statement. He was also pressurized to deposit a sum of ₹20,00,000/-. Initially, Sh. Ashok Kumar Jain resisted the said demand but the concerned officers continued to pressurise him. He succumbed to their pressure and in order to avoid any confrontation, deposited a sum of ₹10,00,000/- (Rupees ten lacs only) through DRC-03 dated 07.09.2022, after consulting with the petitioner.

6. Thereafter, the petitioner was issued a Show Cause Notice dated 06.10.2022 proposing to cancel the petitioner's GST Registration for the following reason:

> "I The tax payer has not present in office on 19.09.22 against the summons given to him u/s 70 of the CGST Act, issued on 13.09.2022."

7. The petitioner was also called upon to furnish a reply within a period of seven working days and appear before the proper officer on

13.10.2022 at 02:46 p.m. The show cause notice also recorded that the petitioner's GST registration was suspended.

8. The petitioner responded to the said Show Cause Notice dated 06.10.2022 on 10.10.2022. In her response, the petitioner asserted that her accountant had visited the office as required and had sought further time to prepare the documents. The petitioner also requested that the suspension of her GST Registration be revoked.

9. The petitioner's contention was not accepted and the proper officer passed the Order-in-Original dated 28.10.2022 (which is also impugned in the present petition), cancelling her GST Registration with effect from 03.07.2017. The reasons for cancellation as stated in the said order reads as under:

> "l. DC(AE), CGST, Delhi North vide letter C.No.(Hqrs.Prev.) GST-N/ 12/2354/Gr-IV/2022 dated 30.09.22 has directed to initiated the cancellation of registration of the tax payer from the date of Registration in GST."

10. The petitioner appealed against the said order under Section 107 of the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**'). However, the said appeal was rejected by the Order-in-Appeal dated 30.05.2023. This has led the petitioner to file the present petition.

11. It is material to note that the petitioner's appeal against the Order-in-Original dated 28.10.2022 was rejected solely on the ground of limitation.

12. In terms of Section 107(1) of the CGST Act, an appeal from an

order of an Adjudicating Authority is required to be filed within a period of three months from the date of communication of the said order. Thus, in the present case, the petitioner was required to file an appeal before 28.01.2023. However, the petitioner filed the same on 13.02.2023. The petitioner had along with the appeal filed an application seeking condonation of the delay of fourteen days. She had explained that the delay was occasioned as she was in the process of providing the documents to the Anti Evasion Branch for verification. In the meanwhile, the petitioner had also sent a letter dated 12.12.2022, requesting that the cancellation of her GST Registration be revoked. The petitioner claims that during the said period, the petitioner also deposited a further sum of ₹10,00,000/- on 26.12.2022, on the assurance that the case would proceed 'peacefully'.

13. Undisputedly, in terms of Section 107(4) of the CGST Act, the Appellate Authority had the discretion to condone the delay in filing the appeal, not exceeding one month. In the present case, it is apparent that the petitioner was interacting with the Department for resolution of the matter regarding cancellation of the GST Registration and in our view, the petitioner had sufficiently explained the delay of fourteen days. Considering the wide ramifications of cancellation of GST Registration, we are of the view that the Appellate Authority ought to have condoned the delay.

14. As noted above, the order dated 28.10.2022 cancelling the GST registration had been passed solely on the directions issued by another authority. The only reason for cancellation of the GST Registration as

disclosed in the Order-in-Original is that, the DC(AE), CGST, North Delhi had, by a letter dated 30.09.2022, directed cancellation of the registration of the taxpayer from the date of her GST Registration. It is material to note that the Order-in-Original dated 28.10.2022 also contained a tabular statement, which indicated that no tax was found payable. It is *trite* law that an authority that is vested with the power to take a decision is required to independently exercise the power and cannot do so on mere directions of another authority, without independently satisfying itself of the said decision. In the present case, it is apparent that the impugned Order-in-Original dated 28.10.2022 has been passed solely on the directions of another authority, without considering the petitioner's reply to the Show Cause Notice dated 06.10.2022. Plainly, the impugned Order-in-Original dated 28.10.2022 cannot be sustained.

15. It is also relevant to note that in terms of the Show Cause Notice dated 06.10.2022, the petitioner's GST Registration was proposed to be cancelled solely for the reason that the petitioner had not responded to the summons issued under Section 70 of the CGST Act. The petitioner had explained that her accountant had visited the office and had sought an adjournment to prepare the documents. The Order-in-Original dated 28.10.2022 does not indicate that the said contention was considered.

16. The cancellation of the GST Registration of a taxpayer has wide implications for the taxpayer and has the propensity of bringing the taxpayer's business to a standstill. It could never be the intention of the legislature to exclude persons from carrying on legitimate business.

Thus, the measure of cancellation of GST must be exercised with circumspection and only in cases, where it is necessary.

17. In view of the above, we set aside the impugned Show Cause Notice dated 06.10.2022, the Order-in-Original dated 28.10.2022 and the Order-in-Appeal dated 30.05.2023. It is further clarified that in the event the respondent authority seeks to propose any adverse action against the petitioner, it would be open to issue a proper Show Cause Notice setting out the reasons for the proposed action. Needless to state, that any orders passed pursuant to the said Show Cause Notice would be informed by reasons.

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

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 18, 2023
RK