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

% *Date of Decision: 29<sup>th</sup> August, 2023*

+ **W.P.(C) 11450/2023 & CM APPL. 44561/2023, CM APPL. 44562/2023**

SHIV GANGA UDYOG THROUGH  
ITS PROPRIETOR

..... Petitioner

Through: Mr. Rakesh Kumar, Adv.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICES  
TAX AND OTHERS

..... Respondents

Through: Ms. Anushree Narain, Standing  
Counsel with Ms. Shivangi  
Sinha, 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 impugning an order dated 06.07.2023 passed by the Appellate Authority (Commissioner of Central Tax Appeals-II, Delhi), whereby the petitioner's appeal against an order dated 28.03.2023 passed by the Proper Officer, was rejected.
2. The Proper Officer had passed the said order dated 28.03.2023 rejecting the petitioner's application for revocation of cancellation of his GST registration.
3. The petitioner's GST registration was cancelled by an order dated 22.07.2022, pursuant to a Show Cause Notice dated 13.06.2022.



The petitioner also impugns the said order dated 22.07.2022.

4. The only reason provided in the said Show Cause Notice reads as under:

*“Discrepancies noticed while conduct of Physical Verification”.*

5. The petitioner was directed to furnish his reply within seven working days from the date of service of the said Show Cause Notice and further appear before the concerned officer on 23.06.2022.

6. As is apparent from the above, the Show Cause Notice is cryptic and is incapable to eliciting any meaningful response. Thus, the petitioner’s response to the Show Cause Notice was equally vague. He responded by stating as under:

*“the dealer is ready to provide information and full co-operation”*

7. The Proper Officer gave full consideration to the said response and cancelled the petitioner’s GST registration for the following reasons:

**“1. THE REPLY SUBMITTED BY THE TAX PAYER IS NOT FOUND SATISFACTORY.”**

8. As obvious from the above, neither the Show Cause Notice nor the order dated 22.07.2022, cancelling the petitioner’s registration with retrospective effect from 02.07.2017, can be sustained. The Show Cause Notice did not specify any specific reasons for cancelling petitioner’s registration. The order dated 22.07.2022 is not informed by reason.

9. The petitioner applied for revocation of cancellation of its GST



registration on 21.08.2022. He also, by a subsequent communication dated 19.01.2023, informed the concerned authorities regarding shifting of its principal place of business to an address described as, 'X-39, Room No 4, 2<sup>nd</sup> Floor, Loha Mandi, Naraina, New Delhi - 110028'.

10. It is the petitioner's case that he could not file the requisite forms for shifting his address because at the material time, his registration was cancelled and no such application could be filed.

11. Apparently, the Proper Officer issued a letter dated 06.03.2023 (which, the learned counsel for the petitioner states, is currently unavailable), calling upon to explain certain discrepancies found during the physical verification of the registered premises on 22.07.2022.

12. Thereafter, a Show Cause Notice dated 20.03.2023, was issued proposing to reject the petitioner's application for revocation of the order of cancellation of his GST registration. The said Show Cause Notice mentions the following reasons for proposing rejection of his application: some discrepancies were found during physical verification; the application for revocation of cancellation of the GST registration was delayed by one day; the petitioner was carrying on his activities from its current address (X-39, Room No 4, 2<sup>nd</sup> Floor, Loha Mandi, Naraina, New Delhi -110028) which was not the place declared in the petitioner's registration; the petitioner had not declared description of goods / services along with HSN and bank details in their registration; and certain discrepancies were noticed in the tax liability returns for the financial years 2018-19, 2019-20 and 2020-21,



which were conveyed to the petitioner by letter dated 06.03.2023.

13. The Notice also indicates that certain online queries were made but the same were not communicated on account of some technical glitches.

14. The petitioner responded to the said Show Cause Notice by a letter dated 23.03.2023. The petitioner explained that the application was filed within the period of thirty days and therefore, there was no delay. He pointed out that he had shifted to the current place of business after the GST registration was cancelled, therefore, it could not apply for any amendment of the GST registration. He claimed that he did not have any additional place of business after revocation. He also stated that he had migrated from the VAT regime w.e.f. 01.07.2017 and the details of banks and HSN were declared on the GSTIN portal.

15. The petitioner also disputed that there was any difference in the outward supply in the financial year 2018-19 and contended that the alleged difference was on account of excess tax paid in the financial year 2017-18, which was adjusted in the financial year 2018-19.

16. The petitioner's application seeking revocation of cancellation of its GST registration was rejected as the Proper Officer found that the petitioner's explanation for delay of one day was not acceptable because the petitioner had not quoted any Section of the Limitation Act, 1963 in support of its claim. The HSN of goods and services was not reflected on the CBIC portal. The Proper Officer also highlighted that the principal reason for rejection of his was that the petitioner had shifted its place of business to a new place but the same was not



reflected as additional place of business in the requisite form; thus, GSTIN could not be restored as it pertained to an earlier address.

17. The petitioner appealed the said order to the Appellate Authority. The Appellate Authority noted that the petitioner's application for revocation of cancellation of its GST registration, was rejected for the following reasons and upheld the same:

- a) The effective date of cancellation of GST Registration was 22.07.2022 and revocation application was filed on 21.08.2022. Therefore, it appears that there is a delay of one day in filing of revocation application and needs acceptance of delay of condonation.
- b) The firm is working from X-39, Room No. 4, Second Floor, Loha Mandi, Naraina which is not declared in registration as additional place of business.
- c) The appellant did not declare description of goods/ service along with HSN and Bank details in their registration.
- d) Some discrepancies noticed in the tax liability in the returns of FY 2018-19, 2019-20 and 2020-21."

18. Since the initial order of cancellation of petitioner's GST registration cannot be maintained, as not informed by reason, it is not necessary to examine the orders dated 28.03.2023 and 06.07.2023. However, it is also apparent that the said orders cannot be sustained.

19. The petitioner had explained that the order cancelling its GST registration was passed on 22.07.2022, and it had filed its application for revocation of cancellation of its GST registration on 21.08.2022 and the day of filing the application was not required to be considered. The petitioner had filed its application for revocation on the 30<sup>th</sup> day following the date of its cancellation and, thus, it was within the period of limitation.

20. The principal ground for not restoring the petitioner's GST



registration is that the petitioner had shifted his premises and had not filed the requisite form.

21. The petitioner had, at the initial stage, stated that he had shifted after his registration was cancelled and therefore, was unable to file the requisite forms. This contention was not addressed. Concededly, if a taxpayer's GST registration is cancelled, he is disabled from filing the necessary forms.

22. If the petitioner is disabled from filing the requisite form to record the change of place of business, the same cannot be considered as a ground for not restoring its GST registration. More particularly, since the same was not the ground on which the petitioner's GST registration was cancelled in the first place.

23. Insofar as the discrepancies in the tax returns and tax liability is are concerned, that too cannot be a ground for cancellation of the petitioner's GST registration. The authorities have to proceed in accordance with law in assessing the correct liability, in the event there is any ground to believe that the taxpayer has not truly disclosed the same.

24. Lastly, the petitioner had claimed that he had disclosed the bank details and the HSN of the goods because he had migrated from a VAT regime. However, the same was not accepted. The Appellate Authority had proceeded on the basis that the petitioner had not declared the classification of the goods dealt with by him. In such an eventuality, the apposite course would be to call upon the petitioner to correctly disclose the goods, however, no such communication was issued while the petitioner's GST registration was active.



25. Thereafter, the petitioner was disabled from taking any corrective measures, even if it desired to do so.

26. In view of the above, the present petition is allowed. The impugned orders are set aside.

27. The petitioner's GST registration is directed to be restored forthwith.

28. It is clarified that the respondents are not be precluded from taking such steps, *albeit*, in accordance with law, if they are of the view that the petitioner's registration is required to be cancelled or any other measures are required to be taken. Needless to state that the petitioner's right to contest any such proceedings is also reserved.

29. The petition is disposed of in the aforesaid terms. Pending applications are also disposed of.

**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**AUGUST 29, 2023**

*'KDK'*

