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

% *Date of Decision: 18.12. 2023*

+ **W.P.(C) 13754/2023**

M/S ROXY ENTERPRISES

..... Petitioner

Through: Mr. Akhil Krishan Maggu, Mr.
Vikas Sareen, Ms. Maninder Kaur &
Ms. Oshin Maggu, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Atul Tripathi & Mr. V.K. Attri,
Advs.

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*, impugning an Order-in-Appeal dated 29.09.2023 (hereafter the '**impugned order**') whereby the petitioner's appeal against an order cancelling its GST registration was rejected. This is the third round of litigation between the parties before this Court.

2. The proper officer has issued a Show Cause Notice dated 25.01.2023 (hereafter '**the SCN**') proposing to cancel the petitioner's GST registration for the reasons stated as: "Others". The petitioner was directed to appear before the concerned officer on 31.01.2023. Additionally, the petitioner's GST registration was suspended with



effect from the date of the SCN, that is, with effect from 25.01.2023. Thereafter, by an order dated 14.02.2023, the petitioner's GST registration was cancelled with retrospective effect from 09.11.2021. The reasons for cancelling the petitioner's GST registration as stated in the said order are as under:

“1. The tax payer is non-existing as per Deputy Commissioner, Anti Evasion, CGST Delhi North Letter F.No.IV(Hqrs. Prev) GST-N/12/2800/Gr-2/2022/19846 dated 04.11.2022. Cancellation of Registration is initiated as per the Section 29(2) of CGST Act, 2017 read with Rule 21 of CG&ST Rules, 2017 read with Rule 21 of CG&ST Rules, 2017.”

3. Aggrieved by the aforesaid decision, the petitioner filed a petition before this Court being W.P.(C) No.7023/2023 captioned *M/s Roxy Enterprises v. Union of India & Others*. The said writ petition was heard on 22.05.2023 and this Court found that neither the SCN dated 25.01.2023 nor the impugned order dated 14.02.2023 could be sustained. Although the SCN dated 25.01.2023 did not specify the reasons for proposing to cancel the petitioner's GST registration, the same were reflected in the order dated 14.02.2023. Accordingly, this Court set aside the order dated 14.02.2023 and remanded the matter to the concerned officer to consider afresh. The operative part of the said order reads as under:

“10. In our view, neither the show cause notice dated 25.01.2023, nor the impugned order can be sustained.

11. Since it is now clear that the respondents proposed to cancel the petitioner's registration on the assumption that he was not-existent at his principal place of business, this Court considers it apposite to set aside the impugned order and remand the matter to



the concerned officer to consider afresh after affording the petitioner a full opportunity to be heard

12. Ms. Mathur requests this Court that the time of hearing be fixed to avoid any delay.

13. The petitioner would be at liberty to file a response to the reasons as stated in the impugned order along with all documents that the petitioner seeks to rely on. He shall appear before the concerned office at 10.30 a.m. on 26.05.2023 along with a hard copy of his reply.

14. The concerned officer shall consider the petitioner's objections, including the objection that the relevant Rules have not been complied with, and pass a speaking order within a period of two weeks from today. The petition is disposed of in the aforesaid terms.

15. *Dasti* under the signature of the Court Master.”

4. The petitioner states that pursuant to the said order, he appeared before the concerned officer and provided the necessary documents.

5. Since the key question was whether the petitioner was carrying on its business from the declared principal place of business, a verification was conducted on 06.06.2023. The visiting team found that the petitioner was standing outside his premises and he intimated the visiting team that he has since shifted its principal place of business. The petitioner states that he was carrying on his business from House No. 316, Old Plot No. 29, Ground Floor, Shop No. PVT-3, Kh. No. 842, Street No. 26, Onkar Nagar, Tri Nagar, North West Delhi, Delhi-110035 prior to 31.05.2022, and had shifted his place of business to premises described as 336/26, Onkar Nagar-B, Tri Nagar, Delhi-110035 thereafter. According to the petitioner, the said premises is also



located in the vicinity of his earlier occupied premises.

6. There is a controversy whether the petitioner had informed the visiting team as to his then current address. Whereas, the petitioner claims that he has informed the visiting team regarding his new address, the same is disputed by the respondents as there is nothing on record to substantiate the same.

7. In view of the above, the proper officer passed an order dated 06.06.2023 cancelling the petitioner's GST registration on the ground that the petitioner was not carrying on business from his declared principal place of business.

8. Aggrieved by the same, the petitioner filed an appeal before the Appellate Authority on 22.06.2023 impugning the order dated 06.06.2023. However, the said appeal was not disposed of immediately. Since the petitioner was unable to carry on his business smoothly in absence of a GST registration, the petitioner preferred another writ petition before this Court being W.P.(C) No.11677/2023, *inter alia*, also challenging Rule 23(3) of the Central Goods & Service Tax Rules, 2017 (hereafter '**the CGST Rules**') as arbitrary and violative of Article 19(1)(g) of the Constitution of India.

9. The aforesaid petition was taken up by this Court on 04.09.2023. During the hearing, the learned counsel appearing for the petitioner did not press the prayer for declaring the Rule 23(3) of the CGST Rules as unconstitutional as the petitioner was, essentially, aggrieved by non-disposal of its appeal against the order dated 06.06.2023 by the Appellate Authority.



10. In view of the above, this Court passed an order dated 04.09.2023 disposing of the aforementioned petition – W.P.(C) No.11677/2023 – with a request to the Appellate Authority to dispose of the petitioner’s appeal as expeditiously as possible and preferably within a period of four weeks from that date.

11. The petitioner’s appeal was heard by the Appellate Authority and the same was rejected by the impugned order. The petitioner has filed the present petition aggrieved by the said order.

12. Although, the petitioner has an efficacious remedy of filing a statutory appeal before the learned Tribunal, the petitioner is unable to avail of the said remedy as the Tribunal has not been constituted. In the given circumstances, this Court considers it apposite to entertain the present petition.

13. Before the Appellate Authority, the petitioner had filed a Rent Agreement in respect of its current place of business, which reflects that the petitioner had commenced paying rent for the said premises with effect from 31.05.2023. The Appellate Authority considered the same and it is apparent from the impugned order that the Appellate Authority accepted that the petitioner had shifted to a new premises with effect from 31.05.2023. Notwithstanding the same, the Appellate Authority rejected the petitioner’s appeal on the ground that the petitioner could not substantiate that he was continuing to function from the earlier place of business till 31.05.2023.

14. The petitioner produced Rent Agreement dated 15.11.2021 in respect of its earlier place of business. The said Rent Agreement was



for a period of eleven months and therefore the Appellate Authority had reasoned that the petitioner would have continued to operate from the said premises till 14.10.2022, however, did not accept that the petitioner continued to occupy the said premises thereafter. Thus, according to the Appellate Authority there was a gap between 14.10.2022 (the date on which the earlier Rent Agreement expired) and 31.05.2023 (the date on which the Rent Agreement for the new premises had commenced). According to the petitioner, although its Rent Agreement for the earlier premises expired on 14.10.2022, the petitioner had continued to occupy the same till he shifted to the current place of business in the end of May, 2023.

15. It is apparent that no physical verification had been carried of the petitioner's earlier premises during the period 14.10.2022 to 31.05.2023. Any such verification was required to be carried in accordance with the Rules, which also mandates the petitioner to be issued a notice for the same.

“Rule 25. Physical verification of business premises in certain cases. - Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in **FORM GST REG-30** on the common portal within a period of fifteen working days following the date of such verification.”

16. In view of the above, we are unable to accept that the Appellate Authority could have taken a definite view of the petitioner being non-



functional from its declared place of business prior to 31.05.2023. It is also apparent that there is no contest that the petitioner had furnished evidence of his leasing another premises with effect from 31.05.2023. Undisputedly, the petitioner has not been unable to upload his application for change of its earlier place of business as the petitioner's GST registration stood suspended with effect from 25.01.2023.

17. In view of the above, we consider it apposite to dispose of the present petition with the following directions:

- (a) The concerned official of the respondents shall visit the petitioner's current premises (336/26, Onkar Nagar-B, Tri Nagar, Delhi-110035), within a period of one week from date, to verify whether the petitioner is occupying the same.
- (b) In the event the petitioner is found occupying and operating from the aforesaid premises, the petitioner's GST registration shall be restored immediately thereafter.
- (c) The petitioner shall file the requisite application regarding shifting to his new place of business. The concerned official shall verify whether the petitioner has filed the requisite returns as well as application for updating its current place of business on the record.
- (d) The respondents shall, thereafter, update the records of the petitioner.

18. It is clarified that nothing stated in this order shall preclude the respondents from initiating any proceedings or pursuing the same in



case it is found that the petitioner is in default of any statutory provisions.

19. The petition is disposed of in the aforesaid terms.

Order *dasti*.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 18, 2023

‘gsr’

