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

% *Date of Decision: 08.07.2024*

+ **W.P.(C) 9129/2024 & CM APPL. 37341/2024**

OLIVE TRADERS

.....Petitioner

Through: Mr.Shivender Kumar Sharma,
Mr.Urooj Chaudhary, Advocates.

versus

THE COMMISSIONER, CGST AND ANR.

.....Respondents

Through: Mr.Shashank Sharma, Sr SC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE SACHIN DATTA

VIBHU BAKHRU, J. (Oral)

1. Issue notice.
2. The learned counsel for the respondents accepts notice.
3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 04.05.2023 (hereafter *the impugned order*) passed by respondent no.2, whereby the petitioner's Goods and Services Tax (GST) Registration, was cancelled. The petitioner also impugns the Show Cause Notice dated 17.04.2023 (hereafter *the impugned SCN*) pursuant to which the impugned order was passed.
4. The petitioner claims that the impugned SCN was issued solely on the basis of the communication received from the other department without the



Proper Officer being independently satisfied of the same. It is contended that the such a show cause notice could not be issued on the dictates of another authority.

5. The petitioner also relies upon the decisions of this Court in *Sant Ram v. Delhi State GST & Ors.: Neutral Citation No.2023:DHC:8838-DB; M/s. Green Polymers v. Union of India & Ors: W.P.(C) 13941/2023* decided on 20.10.2023; the decision of the Tripura High Court in *Dayamay Enterprise v. State of Tripura and Ors.: W.P.(C) No.89/2021* decided on 22.02.2021; and the decision of the Gujarat High Court in *KRD Enterprise through its Proprietor Nileepkumar Bhagvandas Rajput v. State of Gujarat : R/Special Civil Application No.5934/2022* decided on 24.03.2022, in support of its contention.

6. The learned counsel for the respondents counters the aforesaid contention. He submits that the impugned SCN was not issued on the dictates of another officer, but due to the fact that the communication sent to the petitioner was received back with the observations to the effect that 'No such firm found'. He submits that the decisions relied upon by the petitioner are thus, not applicable in the facts of the present case.

7. We find merit in the aforesaid contention. This is not a case where an action has been taken by the Proper Officer to cancel the GST registration based on the dictates of any other authority. The respondent had issued the impugned SCN proposing to cancel the GST registration of the petitioner for the following reason: -

'1. A letter vide F.No.V(16)CGST/KBD/DGRM-20M/R-11/65/2022-23/2814 dated 27.03.2023 was sent to the Taxpayer but received undelivered from postal authorities with the remarks 'No such firm



found'. Please explain your existence.'

8. The petitioner was called upon to furnish a reply within seven working days and was also directed to appear before the Proper Officer on 24.04.2023 at 04.10PM.

9. Concededly, the petitioner did not avail of the opportunity of filing any reply or appearing before the Proper Officer. Consequently, the Proper Officer issued the impugned order on the basis that the petitioner was not existent at the given place of business. The impugned order notes that neither any reply in response to the impugned SCN was filed nor was there any representation on behalf of the petitioner on the appointed date.

10. The petitioner contends that it had a filed reply to the impugned SCN on 27.04.2023. The same is incorrect and is based solely on the reference to a reply dated 27.04.2023 made in the impugned order. The aforesaid reference is erroneous and finds mention on account of the erroneous template used for such orders. Whilst, the opening sentence of the impugned order indicates that it is in reference to the petitioner's reply dated 27.04.2023 in response to the impugned SCN. In fact, no reply was furnished by the petitioner and the same is mentioned in the subsequent sentence in the impugned order.

11. The petitioner has also not annexed a copy of the reply to the impugned SCN claimed to have been sent by the petitioner.

12. After the impugned order was passed, the petitioner filed an application dated 19.07.2023 seeking condonation of delay in filing the application seeking revocation of the cancellation of the GST registration.

13. The same was considered by the Proper Officer and a Show Cause Notice dated 16.01.2024 was issued to the petitioner, *inter alia*, indicating



that the Proper Officer was not satisfied with the reasons for the delay as stated by the petitioner in its application. The petitioner did not respond to the said Show Cause Notice as well. Subsequently, by an order dated 30.01.2024, the petitioner's application for seeking condonation of delay in filing application for revocation of the cancellation of GST registration was rejected.

14. It is, thus, seen that the petitioner's case as to why its registration be not cancelled has not been considered on merits.

15. The learned counsel for the respondent fairly states that the respondent would have no objection in case one more opportunity is granted to the petitioner to respond to the impugned SCN on merits.

16. In the given facts and circumstances of the case, we consider it apposite to set aside the impugned order cancelling the petitioner's GST Registration and permit the petitioner to respond to the impugned SCN. Since the only allegation against the petitioner is that it was found to be non-existent, the petitioner is also at liberty to furnish all documents and material in support of its contention that it continues to be a valid tax entity.

17. Let the response to the impugned SCN along with all relevant material be filed by the petitioner within a period of four weeks from date. The Proper Officer shall consider the same and pass an informed decision after affording the petitioner an opportunity of being heard.

18. We clarify that we have not expressed any opinion on the question whether the petitioner's GST registration is liable to be cancelled and nothing stated in the present order be construed as such. All the rights and contention of the parties are reserved in this regard.



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19. The petition stands disposed of in the above terms. Pending application also stands disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 08, 2024

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Click here to check corrigendum, if any