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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 26.08.2022

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W.P.(C) 10408/2022

CURIL TRADEX PVT. LTD

..... Petitioner

Through: Mrs Anjali Jha Manish, Advocate.

versus

THE COMMISSIONER, DELHI GOODS

AND SERVICE TAX & ANR.

..... Respondents

Through: Mr Sameer Vashisht, ASC (Civil) with
Ms Sanjana Nangia, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This writ petition is directed against the order dated 26.04.2022 passed by respondent no.2. /Sales Tax Officer Class II/AVATO (Ward 63). Via this order, respondent no.2 has cancelled the registration of the petitioner.

2. The cancellation of registration was founded on the show cause notice dated 12.04.2022. The show cause notice, in turn, adverted to a letter dated 06.04.2022 received from the Deputy Commissioner (DC), CGST-Delhi South Commissionerate [hereafter referred to as "DC"]

2.1. The relevant part of the aforementioned show cause notice is extracted hereafter:

"Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1. Letter dt. 6.04.2022 received DC, CGST-Delhi South Commissionerate - the firm is non existent.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 12/04/2022.”

3. As is evident from the extract, the respondents/revenue suspended the registration of the petitioner w.e.f. the date of the issuance of the show cause notice.

4. Being aggrieved, the petitioner approached this Court by way of the instant writ petition.

4.1. The petition was placed before the Court on 11.07.2022 when notice was issued.

5. Mr Sameer Vashisht, who appears on behalf of the respondents/revenue, states that a counter-affidavit has already been filed in the matter.

6. Ms. Anjali Jha Manish, who appears on behalf of the petitioner, says that given the state of pleadings, the petitioner does not wish to file a rejoinder in the matter.

6.1 The statement of Mrs Manish is taken on record.

7. According to Mrs Manish, the impugned order cannot be sustained in law, for the reason that, now, the respondents/revenue appear to have accepted the position that the letter dated 06.04.2022 issued by the DC which was the foundation for the issuance of the show cause notice dated 12.04.2022 and the resultant impugned order, was not furnished to the petitioner.

7.1 Furthermore, Mrs Manish says that it has also emerged that no notice of inspection was served on the petitioner.

7.2 According to Mrs Manish, if the proper officer opted for physical verification of the petitioner's business premises, it could only be carried out in the presence of its authorized representative. In other words, in such eventuality, a prior notice/intimation would have to be served by the proper officer.

7.3. In support of this plea, Mrs Manish relies upon Rule 25 of the Central Goods and Service Tax Rules, 2017 [in short, '2017 Rules'] and a judgement

passed by a coordinate bench of this Court (which included one of us i.e., Rajiv Shakdher J.) dated 26.04.2022, rendered in in W.P.(C.) 8451/2021, titled ***Micro Focus Software Solutions India Pvt. Ltd. v Union of India and Anr.***

8. On the other hand, Mr Vashisht relies on the photographs appended to the counter-affidavit, to demonstrate that there was no business activity being carried out by the petitioner.

8.1 These photographs are appended along with the counter-affidavit filed by respondent no.2.

8.2. It is, therefore, Mr Vashisht's contention that even if the communication dated 06.04.2022 was furnished to the petitioner, the result would be the same, and therefore, the grievance articulated on behalf of the petitioner that principles of natural justice were not adhered to cannot help the cause of the petitioner.

9. We have heard the learned counsel for the parties and perused the record.

9.1. A perusal of the record clearly demonstrates that neither was the letter dated 06.04.2022 furnished to the petitioner, nor was the petitioner given any notice of inspection.

10. Insofar as the requirement to give notice of inspection is concerned, Mrs Manish bases her submission on Rule 25 of the 2017 Rules. The said rule reads as follows:

“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 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 REG30 on the common portal within a period of fifteen working days following the date of such verification.” [Emphasis is ours]

11. A careful perusal of the rule shows that, if after the grant of registration, the proper officer is satisfied that physical verification of the place of business

of the concerned person is required, the proper officer may get such verification of the business place carried out, *albeit*, in the presence of the said person, and thereafter, have the verification report along with other documents including photographs uploaded in Form GST REG30 on the common portal within 15 working days following the date of such verification.

12. In the instant case, what is not in dispute is that physical verification was carried out by the respondents/revenue, *albeit*, without having the petitioner's authorized representative remain present; although, concededly, insofar as the second part of the rule is concerned, which required uploading of the verification report and other documents including photographs, we are told that the same was done.

12.1. Mr Vashisht says that inspection, *albeit*, without the presence of the petitioner's authorized representative, was carried out on 13.04.2022 and the verification report was uploaded on 18.04.2022.

12.2. This aspect of the matter is not disputed by Mrs Manish.

13. Furthermore, Mr Vashisht says that the verification report is indicative of the fact that one Mr Tej Bahadur, a worker of the petitioner, was found at the business premises.

14. Therefore, what emerges from these facts is that, although the inspection of the petitioner's business premises was carried out, no prior notice was given by the respondents/revenue.

14.1. The person found at the site, even according to the respondents/revenue, was a worker of the petitioner. Had the respondents/revenue given notice/intimation of the inspection, it could have been carried out in the presence of the authorized representative of the petitioner and hence lent greater authenticity and credibility to the inspection report.

15. Be that as it may, admittedly, what the photographs reveal is that the business premises exist. Furthermore, the photographs do reveal that the premises were evidently empty.

16. It is Mrs Manish's submission that since the petitioner deals with scrap material, there is constant movement of material which is brought into the business premises.

16.1 Thus, it is Mrs Manish's contention, therefore, that the photographs appended by the respondents/revenue, by themselves, would not establish that the petitioner does not carry out any business activity at the subject premises.

17. According to Mrs Manish, had the authorized representative of the petitioner been made to remain present at the business premises, the circumstances obtaining at the site could have been explained by the said representative.

18. Be that as it may, what thus emerges is that the letter dated 06.04.2022 has not been furnished to the petitioner, which, as indicated above, forms the basis of the show cause notice and the impugned order.

19. Besides this, the proper officer opted to have the petitioner's business premises inspected, *albeit*, without the presence of its authorized representative. As noted above, had notice/intimation been given, the glitch could have been overcome.

20. Furthermore, a perusal of the impugned order would show that no tax or cess is due from the petitioner.

21. Thus, having regard to the overall circumstances obtaining in the case, the writ petition is disposed of with the following directions:

(i) The petitioner will file an application for revocation of order of cancellation within the next 15 days.

(ii) Once an application is filed, the same will be adjudicated by the concerned officer within two weeks of the date of submission of the application.

(iii) A speaking order will be passed by the concerned officer; a copy of which will be furnished to the petitioner.

(iv) In case the order passed by the concerned officer is adverse to the interests of the petitioner, the petitioner shall have liberty to take recourse to an

appropriate remedy, *albeit*, as per law.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

AUGUST 26, 2022/aj

[Click here to check corrigendum, if any](#)

