



\$~19

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

% *Date of Decision: 22.09.2023*

+ **W.P.(C) 12523/2023 & CM APPL. 49405/2023 & CM APPL. 49406/2023**

SH. SACHIN UPADHYAY, PROPRIETOR OF BHAGWATI TRADERS Petitioner

Through: Mr. Vishal Saxena & Ms. Meenakshi Garg, Advs.

versus

THE ADDITIONAL COMMISSIONER, CENTRAL GOODS AND SERVICE TAX, APPEALS-I, DELHI Respondents

Through: Ms. Anushree Narain, SC with Ms. Nistha Mittal, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

VIBHU BAKHRU, J.

1. Issue notice.
2. Ms. Narain, learned counsel appearing for the respondents, who has joined the proceedings through video conference accepts notice and states that it is necessary to implead the Jurisdictional Commissioner (Commissioner, CGST, North) in this petition. On an oral request, Commissioner, CGST, North is impleaded as a respondent. The petitioner shall file an amended memo of parties within a period of two working days.
3. Ms. Narain accepts notice on behalf of the respondents, including



on behalf of the newly impleaded respondent. With the consent of the parties, the petition has been finally heard.

4. The petitioner has filed the present petition impugning an order (Order-in-Appeal No.140/ADC/Central Tax/Appeals-1/Delhi/2023) dated 23.05.2023 whereby, the petitioner's application for revocation of the cancellation of his GST registration, was rejected.

5. The petitioner was registered with the GST authorities on 05.02.2020 and allocated GSTIN/UNIQUE ID: 07AIOPU4857B1ZV. The petitioner claims that on 14.03.2020, the petitioner opened a bank account with AU Small Finance Bank Ltd. and uploaded the details of the same on the GST portal.

6. Thereafter on 05.12.2021, the Proper Officer issued a show cause notice proposing to cancel the petitioner's GST registration for the following reason: -

“1. Non compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed.”

6. The petitioner's GST registration was suspended and he was called upon to furnish a reply to the show cause notice within a period of seven working days and appear before the Proper Officer on 08.12.2021.

7. As is apparent from the above that the show cause notice did not provide any clue as to the reason for proposing cancellation of the petitioner's GST registration. This Court has in a number of decisions,



held that such show cause notices, which do not specifically state the reason for proposing adverse actions cannot be sustained. The purpose of the show cause notice is to enable the noticee to respond to the allegations. Since the said show cause notice is incapable of eliciting any meaningful response, it does not meet the standards required for a show cause notice. Any order passed pursuant to such a show cause notice would fall foul of the principles of natural justice.

8. The Proper Officer proceeded to cancel the petitioner's GST registration by an order dated 03.01.2022 on the ground that the petitioner had not uploaded the bank details as evident from the response form. It is also material to note that the petitioner's GST registration was cancelled with retrospective effect from 06.02.2020. The tabular statement set out in the said order dated 03.01.2022 indicates that no tax or penalty is due from the petitioner.

9. Aggrieved by the same, the petitioner filed an application for revocation of the cancellation order. The petitioner also sent emails, once again, setting out the details of his bank accounts. The petitioner also asserted that the same were uploaded on the GST portal prior to issuance of the show cause notice dated 05.12.2021.

10. Pursuant to the said application for revocation of cancellation, the Proper Officer issued a show cause notice dated 28.02.2022 proposing to reject the petitioner's application for the following reason: -

“1 Reason for revocation of cancellation - Reason for revocation of cancellation - The reason entered for revocation of cancellation is not appropriate.”



11. As is apparent from the above, the reasons for proposing to reject the petitioner's application are vague and unintelligible. This Court is at loss to understand the reason for proposing to reject the petitioner's application as articulated by the Proper Officer.

12. To add insult to injury, the petitioner's application for revocation of cancellation of the GST registration was rejected on the ground that the petitioner had not replied to the show cause notice within the time specified therein.

13. The petitioner preferred an appeal under Section 107 of the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**') impugning the order dated 10.03.2022.

14. The impugned order dated 23.05.2023 is equally cryptic and vague. It is evident from the reasons for rejection of the petitioner's appeal as stated in the impugned order dated 23.05.2023, that the said order has been passed without application of mind. The relevant extract of the said order reads as under: -

"7.2 The cancellation of Registration was valid or otherwise: I find that under sub section (1) of Rule 22 of CGST Rules, 2017, proper officer had issued show cause notice dated 05.12.2021 to the Appellant proposing cancellation of their registration on the reason "*Non compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed*". The proper officer vide order dated 03.01.2022 cancelled the registration of the Appellant.

7.3 Now I take up for consideration the plea made by the Appellant for revocation of their cancelled registration; what is to be examined is whether sufficient cause exists for



revocation of cancellation of registration. The law permits revocation of cancellation of registration on sufficient cause being show; In the present appeal the appellant has not refuted the reason cited in their order of rejection of application for revocation of cancellation dated 10.03.2022 in their grounds of appeal; in-fact they also made no mention of this during the personal hearing; therefore I am not inclined to order revocation of cancellation of registration.”

15. The grounds urged by the petitioner, clearly spell out his case that he had furnished the details of his bank accounts and uploaded the same on the GST portal. This is the petitioner’s principal ground in the appeal; however, the impugned order dated 23.05.2023 proceeds on the basis that the appellant had not refuted the reason cited in the order rejecting his application for revocation of cancellation dated 10.03.2022. The summary of the order, as set out in the opening sheet (Form GST APL-04) of the impugned order, reads as under:-

“The Appellant’s registration was cancelled by the proper officer vide order ZA070122006971Y dated 03.01.2022 citing reason “The Taxpayer has not uploaded the Bank Details as evident in Response Form”. The appellant applied for revocation for cancellation of registration which was also rejected by the competent authority vide order ZA0703222038427P dated 10.03.2022. The appellant has submitted that bank details are already filled and uploaded in the portal since the day of registration and still their registration was cancelled without citing any proper reason on notice. In this regard that appellant has attached screenshot of their GST portal showing their bank details and also submitted copy of bank cheque for reference.

Appeal rejected as discussed in detailed order.”

16. The above summary clearly indicates that it was the petitioner’s case that he had submitted the bank details and uploaded on the GST



portal since the date of registration. The appellant had also attached the screenshots of the GST portal showing the bank details and had submitted a copy of the blank cheque for reference. Notwithstanding the above, the appeal was dismissed on the ground that the petitioner had not contested the reason as to why his registration was cancelled.

17. As stated above, the impugned show notice dated 5.12.2021 fails to disclose the reason for proposing cancellation of the petitioner's GST registration and therefore, the impugned order cancelling the petitioner's registration falls foul of the principles of natural justice. It is accordingly set aside. The show cause notice dated 28.02.2022 is also unsustainable as it is unintelligible.

18. For the reasons stated above, the impugned orders and the orders cancelling the petitioner's registration are set aside. We are unable to countenance the manner in which the appellant's contentions have been dealt with by the Proper Officer as well as the Appellate Authority. The petition is, accordingly, allowed with costs, quantified at ₹5,000/-. The cost shall be paid to the petitioner within a period of two week from today.

19. Order *dasti* under the signature of the Court Master.

VIBHU BAKHRU, J

TUSHAR RAO GEDELA, J

SEPTEMBER 22, 2023
Ch