

(2023) 08 DEL CK 0142

In the Delhi High Court

Case No : Civil Writ Petition No. 6991 Of 2023

Ottimo Visuals

APPELLANT

Vs

Commissioner Of Gst, Delhi West And Ors.

RESPONDENT

Date of Decision : 16-08-2023

Acts Referred:

Citation : (2023) 08 DEL CK 0142

Hon'ble Judges : Vibhu Bakhru, J;Amit Mahajan, J

Bench : Division Bench

Advocate : Vineet Bhatia, Aamnaya Jagannnath Mishra, Nidhi Aggarwal, Jyoti Verma, Aditya Singla, Charu Sharma, Peehu Hooda

Final Decision : Allowed

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, impugning a show cause notice dated 07.07.2022 (hereafter 'the impugned show cause notice') proposing the cancellation of the petitioner's GST registration.

The petitioner also impugns the order dated 18.08.2022 cancelling its GST registration passed pursuant to the impugned SCN. The petitioner had applied for revocation of the order cancelling its GST registration on 12.09.2022, however, the said application was also rejected by an order dated 13.10.2022. The petitioner impugns the said order as well.

2. The respondents issued the impugned show cause notice on 07.07.2023 proposing to cancel to the petitioner's GST registration for the following reasons.

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

3. The petitioner was directed to appear before the proper officer on 25.07.2022 at 11:00 a.m. and to file a reply within a period of seven working days from the date of the service of the said show cause notice. The petitioner neither filed a

reply nor appeared before the proper officer. On 18.08.2022, the proper officer passed an order cancelling the petitioner's GST registration. Curiously, the said order refers to a reply dated 16.07.2022 purportedly sent by the petitioner to the impugned show cause notice. However, it appears that the said reference is on account of some technical glitch and, in fact, no reply was furnished by the petitioner. The said order dated 18.08.2022 records the reason for cancelling the petitioner's GST registration in the following words: -

"1. Cancellation was initiated as the taxpayer/firm was found non-existent at their registered principle place of business on physical verification. Taxpayer neither attended PH nor replied to query raised and further no reply received no tax deposited as informed by this office letters dated 23.05.2022 & dated 28.04.2022. Accordingly, GST registration is hereby cancelled. Your duty, penalty and interest liabilities will stand as it is, including filing of GSTR-10 (annual returns) within 3 months of the cancellation of registration. Thereof as applicable is still due on you and you are hereby advised to deposit the same. If not, suitable action as per law will be initiated against you."

4. It is important to note that the petitioner's GST registration was cancelled with retrospective effect from 02.07.2017. It is also relevant to note that the tabular statement indicating the amount of tax recoverable from the petitioner as reflected in the impugned order dated 18.08.2022 records the tax payable as nil.

5. It is the petitioner's case that it had shifted its place of business in Delhi to Shop No.10, Property No. 11/35-B, First Floor, Tilak Nagar, New Delhi in the month of July, 2021. The petitioner had also explained that the earlier premises, where it was carrying on its business, was destroyed by the Northern Railways and therefore the petitioner was compelled to shift from the said premises.

6. Aggrieved by cancellation of its GST registration with retrospective effect, the petitioner filed an application seeking revocation of the order dated 18.08.2022 cancelling its GST registration. On receipt of the said application dated 12.09.2022, the concerned officer issued a show cause notice dated 23.09.2022 proposing to reject the petitioner's application for following reasons: -

"Any Supporting Document - Document Upload - Document not legible"

7. The petitioner was also called upon to file a reply within a period of seven working days from the date of the said notice and directed to appear before the concerned authority on 29.09.2022 at 11:00 a.m.

8. There is a controversy whether the petitioner had, in fact, appeared before the concerned officer. Whilst the order dated 29.09.2022 passed by the concerned officer records that the petitioner did not appear on the given date; the stand in the counter affidavit is to the contrary. In the counter-affidavit, the respondents have affirmed that "the petitioner appeared before the concerned officer through their CA" but submitted an "unsatisfactory reply dated 29.09.2022".

9. The petitioner's application for revocation of cancellation was rejected by an

order dated 13.10.2022.

10. Mr. Singla, learned counsel appearing for the respondents submits that during the scrutiny of returns for the tax period 2017-18, certain discrepancies in the GST returns filed by the petitioner were identified and a notice dated 28.04.2022 was issued to the petitioner in respect of the said period at its registered office. A similar notice dated 23.05.22 was also issued for the tax period 2018-19. In addition, the notices were also sent through email. However, the notice dated 28.04.2022 was received back by the Postal Department on 12.05.2022 with the remark "left without address". Similarly, the notice dated 23.05.2022 issued in respect of the tax period 2018-19 was received back on 27.05.2022 with the similar remark – "left without address".

11. Notwithstanding the same, a reply was also received from the petitioner on 30.05.2022, whereby the petitioner had requested for further period of ten days for furnishing the relevant data as required.

12. In the circumstances, the concerned officer conducted a physical verification of the premises on 05.07.2022, which indicated that the complex housing the petitioner's place of business had been demolished by the Railway Department "many years ago" and no building existed on the said premises.

13. It is in the aforesaid context that the concerned officer issued the impugned show cause notice on 07.07.2022. However, the said show cause notice did not indicate any of the facts or allegation as stated in the counter-affidavit filed on behalf of the respondents. It merely stated the reason for proposing cancellation of registration as, "non compliance of any specified provisions in the GST Act or Rules made thereunder as may be prescribed".

14. It is trite law that a show cause notice must clearly indicate the reasons for proposing the adverse action in order to enable the noticee to respond to the same. Clearly, the impugned show cause notice does not meet this standard. As is apparent from the above, no meaningful response could be elicited from the respondents on the basis of the cryptic reasons as set out in the show cause notice.

15. It is also important to note that the impugned show cause notice dated 07.07.2022 did not propose any action for cancelling the petitioner's GST registration with retrospective effect from 02.07.2017.

Thus, the petitioner was not put to notice of any such measure.

16. The order of cancellation dated 18.08.2022 did indicate that the petitioner's GST registration was cancelled as the firm was found to be non-existent at the registered place of business on physical verification. However, it is important to note that this order did not contain any allegation that the premises had been demolished many years ago as stated in the counter affidavit filed on behalf of the respondents.

17. A copy of the application filed by the petitioner seeking revocation of the cancellation order dated 18.08.2022 is not on record, but the screenshots indicating that the said application was filed have been annexed to the present petition. The learned counsel appearing for the petitioner submits that the petitioner had, along with its application, enclosed documents such as the aadhaar card, pan card, electricity bill and NOC from the landlord to support the petitioner's claim of having shifted its place of business in July, 2021. The screenshot reflects that such accompanying documents were filed.

18. The concerned officer proposed to reject the petitioner's application seeking revocation of the cancellation of the petitioner's GST registration and accordingly, issued a show cause notice dated 23.09.2022. The reasons stated in the show cause notice are equally cryptic. The same read as "Any Supporting Document – Document Upload - Document not legible". It is not discernable whether the documents were illegible; the documents filed did not support the petitioner's claim or there were some errors in uploading the same. A show cause notice, which does not clearly indicate the reason for proposing the proposed action – in this case, rejection of the petitioner's application for revocation of cancellation of its GST registration – cannot be sustained. The said show cause notice is flawed and is liable to be set aside.

19. The impugned order dated 13.10.2022 rejecting the petitioner's application for revocation of cancellation of its GST registration indicates that the petitioner's application was rejected for the following reasons.

"GST revocation application is rejected as firm was found non-existent, no one appeared for personal hearing scheduled on 29.09.2022, taxpayer did not submit/upload specific reply to the query raised. Taxpayer is directed to pay all your pending Govt. dues immediately and submit proof evidencing their existence at the declared place of business."

20. Although the said order states that no one appeared for the personal hearing scheduled on 29.09.2022. The affidavit, filed by the respondents, affirms to the contrary. Admittedly, the petitioner's Chartered Accountant had appeared on 29.09.2020 and handed over the petitioner's reply to the show cause notice, inter alia, explaining that the petitioner had shifted its premises in July, 2021. The petitioner also claims that it had submitted documents evidencing the rent receipt and the NOC from the landlord, which substantiated the petitioner's assertion that it was carrying on business at the new address.

21. The impugned order dated 13.10.2022 neither refers to the reply filed by the petitioner nor considers the explanation provided by the petitioner. There is no dispute that the premises where the petitioner claims to have been carrying on his business prior to shifting to new address in July, 2021, was demolished by the Northern Railway Authorities. Although, it is alleged in the counter affidavit that it was demolished many years ago, there is no material on record to establish the same. It is the petitioner's case that the premises had been demolished some

time in the year 2021 compelling it to shift to a new place.

22. In view of the above, we are of the view that neither the impugned show cause notice nor the show-cause notice dated 23.09.2022 can be sustained. Consequently, the orders passed pursuant thereto are liable to be set aside.

23. In the circumstances, we set aside the impugned show cause notice; the show cause notice for rejection of application filed by the petitioner for the revocation of the cancellation of its GST registration dated 23.09.2022; the order cancelling the petitioner's registration dated 18.08.2022; and the order dated 13.10.2022 rejecting the petitioner's application for revoking the cancellation of its GST registration.

24. We, however, clarify that it would be open for the respondents to issue a fresh show cause notice if the respondents desire to cancel the petitioner's GST registration clearly indicating the reasons for the same. The petitioner would be at liberty to respond to the said show cause notice within the time as provided. Needless to state that in such a case the concerned officer shall take an appropriate decision after affording the petitioner an opportunity to be heard.

25. The petition is allowed in the aforesaid terms.