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

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Date of decision: 07.09.2022

+ **W.P.(C) 10315/2022**

M/S. BALAJI ENTERPRISES

.....Petitioner

Through: Ms Anjali J. Manish with
Mr Priyadarshi Manish, Advocates.

versus

PRINCIPAL ADDITIONAL DIRECTOR GENERAL,
DIRECTORATE GENERAL OF GST INTELLIGENCE & ORS.

.....Respondents

Through: Mr Aditya Singla, Sr. Standing
Counsel.

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 04.05.2022, passed by the Superintendent, Ward-66.

1.1 *Via* this order, the petitioner's registration has been cancelled.

1.2 The order dated 04.05.2022 is founded on the show-cause notice ("SCN") dated 31.03.2022. It is, therefore, relevant for the purpose of adjudication of this writ petition, that the SCN is extracted hereafter, as we have a grave concern about the manner in which the SCN has been framed:

“Show Cause Notice for Cancellation of Registration
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. *In case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts.*

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

You are hereby directed to appear before the undersigned on 07/04/2022 at 10:35 AM

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 31/03/2022.”

2. A perusal of the SCN would reveal, that there is next to nothing stated, as to the reason why the concerned authority proposed the cancellation of registration.

2.1 As a matter of fact, the concerned authority, ironically, put the onus on the petitioner to demonstrate that registration has been obtained by fraud, willful misstatement statement or suppression of facts.

2.2 We would have thought, that in the first instance, the concerned authority would have adverted to some broad facts, which would have

demonstrated that the petitioner had employed fraud, willful misstatement or suppression of facts, while obtaining registration.

2.3 Nothing of this kind has been stated in the SCN.

3. Since, ostensibly, principles of natural justice were sought to be adhered to by the concerned authority, the petitioner was directed to file a reply to the SCN during the given timeframe i.e., seven days, and appear before the concerned authority on the given date and time.

3.1 The petitioner, admittedly, did file a reply.

3.2 This reply is dated 07.04.2022, and is marked as Annexure P-57. The relevant part of the reply is, thus, extracted hereafter:

“I have received show-cause notice dated 31/03/2022 vide reference no. ZA070322181146R with noting (In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts)

In this regard It is stated that I have filed all the duly returns up to February 2022 and all the GST Liability has been properly discharged and all other duly compliances regarding GST compliances has been properly compiled within the stimulated bracket of GST Act 2017.

It is further stated that registered business place i.e., FIRST FLOOR, H.NO. 96, ROOM NO.-106, BLOCK-A, WAZIRPUR, WAZIRPUR GROUP, INDUSTRIAL AREA, NORTH WEST DELHI- 110052, is owned by me and ownership documents are attached herewith, this premises is used for office purpose for management of all the administrative and executive activity of M/S SHRI BALAJI ENTERPRISES and stock are manage and kept at warehouse at additional place of business.

Therefore, you are requested to kindly visit and inquiry the entity at current registered and additional place on GST portal/certificate attached herewith, Please make necessary

checks and take required actions and then drop the suspension of GSTIN”

4. Within less than a month, the impugned order was passed. Since the impugned order is brief, the relevant portion of the said order is set forth hereafter:

“This has reference to your reply dated 07/04/2022 in response to the notice to show cause dated 31/03/2022

Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s).

1. Suo Moto cancellation of the taxpayer was initiated u/s 29(2) of the CGST Act 2017 as per letter DGGI/INV/GST/510/2022-Gr R-0/o Pr ADG-DGGI-ZU-CHEN dated 29.03.2022 received from DGGI, Chennai as an enquiry is pending against the taxpayer in r/o supply of spurious goods.

In response, reply vide letter dated 07.04.2022 was received from taxpayer.

Therefore, registered address of the taxpayer was physically verified by range inspector after approval from competent authority on file and he reported that "no one was found there and door of the premise was found sealed by DGGI Chennai".

In view of above, GSTIN is cancelled Suo Moto u/s 29(2) of the CGST Act 2017 and taxpayer will be liable for any liability u/s 29(3), 29(5), 45 & 47 of the CGST Act 2017 even after cancellation.

The effective date of cancellation of your registration is 31/03/2022

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the

computation and basis thereof is as follows:

The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder

<i>Head</i>	<i>Central Tax</i>	<i>State Tax/UT Tax</i>	<i>Integrated Tax</i>	<i>Cess</i>
<i>Tax</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Interest</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Penalty</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Others</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Total</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>

5. A plain reading of the order would show, that the petitioner's registration was cancelled on account of an enquiry pending against the petitioner, which evidently is being carried out by DGGI, Chennai concerning supply of "spurious goods."

5.1 Furthermore, it is also indicated, as is evident on a plain reading of the impugned order, that the premises of the petitioner were physically verified by the Range Inspector, after receiving approval from the competent authority, and that it was found that the premises had been sealed by DGGI, Chennai.

6. Interestingly, the impugned order reveals, that nothing was due from

the petitioner on account of tax, interest, penalty or cess.

7. Clearly, the SCN did not advert to the facets, which were referred to in the impugned order, whereby the petitioner's registration has been cancelled.

7.1 Although, as per the impugned order, the Range Inspector appears to have physically verified the petitioner's premises, neither was any notice given of the physical verification, nor is the report which was generated after the verification, uploaded on the portal.

7.2 This was required to be done, as provided in Rule 25 of the CGST Rules.

7.3 We have specifically queried Mr Aditya Singla, who appears on behalf of the respondents/revenue on this aspect of the matter.

7.4 Mr Singla is not able to give a satisfactory answer, as to whether or not the verification report had been uploaded on the designated portal.

8. Ms Anjali J. Manish, who appears on behalf of the petitioner, has emphatically submitted before us, that the verification report has not been uploaded on the designated portal.

9. Apart from anything else, there is, certainly, an infraction of the provisions of Rule 25 of the CGST, and that apart, as indicated above, the impugned order has gone beyond the frame of the SCN.

10. Accordingly, the prayer made in the writ petition is allowed.

11. The impugned order is set aside.

12. The respondents/revenue will restore the registration of the petitioner.

12.1 It is made clear though, that this order will not come in the way of the respondents/revenue issuing a fresh SCN or carrying on investigation

against the petitioner, *albeit* as per law.

13. The writ petition is disposed of in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

SEPTEMBER 7, 2022 / tr

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