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

% *Date of Decision: 09.02.2023*

+ **W.P.(C) 14250/2022**

M/S. RAKESH ENTERPRISES Petitioner

Through: Mrs Anjali Jha Manish, Mr
Priyadarshi Manish, Mr Anmol
Arya and Mr Uday Pathak,
Advocates.

versus

THE PRINCIPAL COMMISSIONER CENTRAL
GOODS AND SERVICES TAX & ORS. Respondents

Through: Mr Aditya Singla, Senior
Standing Counsel with Ms
Karnika Dubey and Mr Sahil
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 28.12.2020 passed by the Superintendent, Ward-90 whereby the petitioner's registration under the Central Goods and

Services Tax Act, 2017 (hereafter 'the Act') was cancelled. The said order was passed in furtherance of the proceedings commenced by the Show Cause Notice dated 15.12.2020. Admittedly, the allegation against the petitioner is that it had defaulted in filing the returns for more than six months.

2. The petitioner had allegedly, responded to the said Show Cause Notice by filing a reply dated 24.12.2020. The learned counsel for the petitioner states that the same has not been filed along with the petition as the copy of the same is not readily available. She states that the Advocate who was engaged by the petitioner at the material time has not supplied a copy of the same.

3. Mr. Singla, learned counsel for the respondent states that the case history does not reflect that the petitioner had filed any response to the Show Cause Notice dated 15.12.2020. He contends that possibly, there was a technical glitch and the reference to the reply dated 24.12.2020 has been automatically generated.

4. The counter affidavit filed by the respondent in this regard is somewhat inconsistent. Although the respondent has stated in one of the paragraphs that the petitioner had not submitted any response. The averments made by the petitioner, in another paragraph, to the effect that it had submitted a response to the Show Cause Notice has not been traversed. On the contrary, the same is accepted as a matter of record.

5. We are unable to accept that the petitioner has not filed a response to the Show Cause Notice, as the order dated 28.12.2020 expressly

records as under:

“This has reference to your reply dated 24/12/2020 is response to the notice to show cause dated 15/12/2020”.

6. There is no statement in the counter affidavit to the effect that the order dated 28.12.2020 suffers from any error as is now sought to be contended before this Court.

7. Although the impugned order dated 28.12.2020 refers to the petitioner’s response to the Show Cause Notice, it does not indicate as to the contents thereof or reflects any discussion in respect of the petitioner’s explanation.

8. In view of the above, we find merit in the petitioner’s contention that the impugned order cannot be sustained.

9. Before concluding, it is also relevant to note that there is no dispute that the petitioner has filed its returns, albeit belatedly, and has also paid the tax and penalty in accordance with the Act.

10. This Court may also note that the Madras High Court in *TVL. Suguna Cutpiece Center v. Appellate Deputy Commissioner (ST) (GST)*, *SALEM: 2022 (61) G.S.T.L. 515 (Mad.)*, had also observed that it is not the intention of the authorities to debar and de-recognise assesseees from coming back into the Goods and Service Tax (GST) fold. This was in the context of petitions where GST registrations of dealers had been cancelled and they had not availed of the alternate remedy seeking revocation of the cancellation orders within the time

prescribed. The relevant observations made by the Madras High Court are set out below:

“206. It should be however remembered that the provisions of the Goods and Services Tax Act, 2017 cannot be interpreted in such a manner, so as to debar an assessee, either from obtaining registration or reviving the lapsed/cancelled registration as such an interpretation would be not only contrary to the Article 19(1)(g) of the Constitution of India but also in violation of Article 14 and Article 21 of the Constitution of India.

207. A reading of *Notification No.52/2020-Central Tax, Central Board of Indirect Taxes and Customs, dated 24-06-2020*, further indicates that returns could be filed belatedly on payment of late fee and waivers were also granted. Relevant portion of the said Notification reads as under:-

(ii) after the third proviso, the following provisos shall be inserted, namely: –

“Provided also that the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived which is in excess of an amount of two hundred and fifty rupees for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the said return between the period from 1st day of July, 2020 to 30th day of September, 2020:

Provided also that where the total amount of central tax payable in the said return is nil, the total amount of late fee payable for a tax period, under section 47 of the said Act shall stand waived for the registered person who failed to furnish the return in FORM GSTR-3B for the months of July, 2017 to January, 2020, by the due date but furnishes the

said return between the period from 01st day of July, 2020 to 30th day of September, 2020.”.

208. The provisions of the GST Enactments and the Rules made there under read with various clarifications issued by the Central Government pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear, intention is to only facilitate and not to debar and de-recognised assesseees from coming back into the GST fold.

209. Thus, the intention of the Government has been to allow the persons like the petitioners to file a fresh application and to process the application for revocation of the cancellation of registration by the officers.

210. In my view, no useful purpose will be served by keeping these petitioners out of the bounds of GST regime under the respective GST enactments other than to allow further leakage of the revenue and to isolate these petitioners from the main stream contrary to the objects of the respective GST enactments.

211. The purpose of GST registration is only to ensure just tax gets collected on supplies of goods or service or both and is paid to the exchequer. Keeping these petitioners outside the bounds of the GST regime is a self-defeating move as no tax will get paid on the supplies of these petitioners.

212. May be, organised companies who comply with the requirement of GST enactments may not give business with these petitioners. However, by keeping the petitioners out of the bounds of GST law, purpose of the Act will not be achieved. It will also not mean that the petitioners will not do business i.e., of either supplying goods or service in the unorganised sector. They will

still do their business, may be surreptitiously and clandestinely.

213. They may perhaps not get opportunity to supply goods or services to established players. They may still supply to smaller players who may not be keen on GST compliance by the petitioners.

214. By not allowing the petitioners to revive their registration is to de-recognise a whole lot of entrepreneurs and to not to collect GST at all from them.

215. It will only strain the system, as these petitioners will continue to carry on their business and supply goods and service and/or end up not paying the GST under the respective GST enactments. It will lead to loss of revenue to the Government which is not intended when these enactments were enacted.

216. Since, no useful will be served by not allowing persons like the petitioners to revive their registration and integrate them back into the main stream, I am of the view that the impugned orders are liable to be quashed and with few safeguards.

217. There are adequate safeguards under the GST enactments which can also be pressed against these petitioners even if their registration are revived so that, there is no abuse by these petitioners and there is enough deterrence against default in either paying tax or in complying with the procedures of filing returns.

218. Further, the Government requires tax to meet its expenditure. By not bringing these petitioners within the GST fold, unintended privilege may be conferred on these petitioners unfairly to not to pay GST should they end supplying goods and/or services without registration. For example, a person renting out an immovable property will continue to supply such service irrespective of registration or not.

219. Therefore, if such a person is not allowed to revive the registration, the GST will not be paid, unless of course, the recipient is liable to pay tax on reverse charge basis. Otherwise, also there will be no payment of value added tax. The ultimate goal under the GST regime will stand defeated. Therefore, these petitioners deserve a right to come back into the GST fold and carry on their trade and business in a legitimate manner.

220. The provisions of the GST Enactments and the Rules made there under read with various clarifications issued by the Central Government pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear, intention is to only facilitate and not to debar and de-recognized assesseees from coming back into the GST fold.”

11. A similar view has also been expressed by the Division Bench of Orissa High Court in *Durga Raman Patnaik v. Additional Commissioner Of GST (Appeals) & Ors., 2022 (67) G.S.T.L. 19 (Ori.)*.

12. It is not necessary for this Court to examine whether the time period as stipulated under Section 30 of the Act is mandatory in this case. This is because it is apparent that the impugned order dated 28.12.2020, cancelling the petitioner’s registration is unsustainable as it does not consider the petitioner’s response to the Show Cause Notice.

13. The impugned order dated 28.12.2020 is set aside. Consequently, the respondents are directed to restore the petitioner’s Registration (being Registration No. 07ASMPK8600N1Z9).

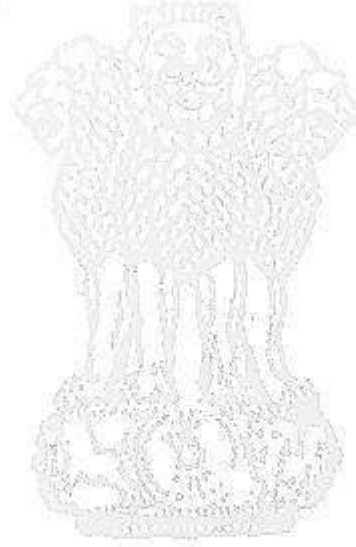
14. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 9, 2023
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HIGH COURT OF DELHI



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