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

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Date of Decision : 03.09.2024

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W.P.(C) 11739/2024 & CM APPL. 48831/2024**SALUJA OVERSEAS PVT. LTD.**

.....Petitioner

Through: Mr Anshuj Dhingra, Ms Shubhangda
Singh and Ms Muskan Banga,
Advocates.

versus

**COMMISSIONER OF CGST AND CENTRAL
EXCISE DELHI EAST COMMISSIONERATE**

.....Respondent

Through: Mr Gibran Naushad, SSC.
Mr.Rajeev Aggarwal, ASC and
Mr.Shubham Goel, Advocate.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 08.10.2021 (hereafter *the impugned order*), whereby the petitioner's Goods and Services Tax (GST) registration was cancelled with retrospective effect from 01.07.2017.

2. The impugned order was passed pursuant to the Show Cause Notice dated 26.08.2021 (hereafter *the impugned SCN*), whereby the petitioner was called upon to show cause why its GST registration not be cancelled. The



only reason set out in the impugned SCN for proposing the cancellation of the petitioner's GST registration reads as under: -

“1 Collects any amount as representing the tax but fails to pay the same to the account of the Central/ State Government beyond a period of three months from the date on which such payment becomes due.”

3. The petitioner was called upon to furnish its reply to the impugned SCN within a period of seven working days from the date of the service of the impugned SCN and to appear before the proper office on the appointed date and time. The petitioner's GST registration was also suspended with effect from the date of the impugned SCN, that is, with effect from 26.08.2021.

4. It is material to note that the impugned SCN did not mention any proposal to cancel the petitioner's GST registration with retrospective effect from the date when it was granted. Although, the impugned SCN directed the petitioner to appear before the concerned officer on the appointed date and time, but no such time or date was indicated in the impugned SCN.

5. It is also material to note that the impugned SCN did not specify any particulars as to the allegations that the petitioner had collected the tax and had failed to deposit the same in the account of the Central / State Government beyond the period of three months. The impugned SCN did not mention any particulars as to the amount of tax collected or the transaction in respect of which the allegation is made.

6. We are, thus, of the view that the impugned order cancelling the petitioner's GST registration was passed in violation of the principles of



natural justice. First, the petitioner was not afforded any opportunity of hearing as no date or time was fixed for such hearing. Second, the impugned SCN did not propose retrospective cancellation of the petitioner's GST registration. And third, the impugned SCN did not contain any specific particulars as to the alleged collection and non-deposit of the tax or the transaction on which such allegation was premised. Plainly, the impugned SCN is vague and cryptic.

7. In view of the above, the impugned SCN and the impugned order are set aside.

8. The petitioner also prayed that directions be issued to the adjudicating officer to re-adjudicate / reassess the petitioner's liability for the financial years 2017-18 and 2018-19.

9. The petitioner is, essentially, aggrieved by the order dated 26.12.2023 in respect of the tax period from July, 2017 to March, 2018, and the order dated 30.04.2024 in respect of the tax period from April, 2018 to March, 2019 passed under Section 73 of the Central Goods and Services Tax Act, 2017/ the Delhi Goods and Services Tax Act, 2017 (hereafter *the CGST Act/ DGST Act*). It is contended on behalf of the petitioner that the said orders have been passed on account of denial of the Input Tax Credit (hereafter *the ITC*) on supplies availed by the petitioner from its sister concern (Saluja Electronics). The said denial of the ITC is based on retrospective cancellation of the GST registration of Saluja Electronics.

10. The learned counsel for the petitioner states that since the order cancelling the GST registration has been set aside by a separate order passed



today in W.P.(C) 11725/2024 captioned *Saluja Electronics v. Commissioner of CGST and Central Excise Delhi East Commissionerate*, the petitioner must be granted the consequential benefit of such order. The petitioner also relies upon the decision of the Coordinate Bench of this Court in *Sri Sai Vishwas Polymers v. Commissioner of GST and Another: 2024 SCC OnLine Del 2629*. He submits that in the similar circumstances, this Court had set aside the orders passed under Section 73 of the CGST Act / the DGST Act and had directed re-adjudication of the said disputes.

11. The orders passed under Section 73 of the CGST Act / the DGST Act, which the petitioner impugns in this petition, are premised on the basis that the suppliers from whom the petitioner had availed supplies have not deposited the tax and therefore, the petitioner had wrongfully availed the ITC in respect of such supplies.

12. The respondent alleges that in terms of Section 16(2)(c) of the CGST Act/the DGST Act, the petitioner was not entitled to avail the ITC on supplies of goods in respect of which the suppliers had not deposited tax on its outward supplies.

13. We do find from the records that the petitioner has clearly countered the said allegations. The petitioner is unable to establish that the ITC claimed by it in respect of supplies, the tax on such supplies was deposited by its suppliers against their outward supplies to the petitioner.

14. It is rightly pointed out by the learned counsel for the respondent that the petitioner has an efficacious remedy of the statutory appeal against the orders dated 26.12.2023 and 30.04.2024. The learned counsel also fairly



states that in case the petitioner prefers appeals against the said orders, the same may be directed to be considered on merits by the appellate authority notwithstanding that the appeals may be beyond the period of limitation.

15. In view of above, we direct that in case the petitioner file appeals against the orders dated 26.12.2023 and 30.04.2024 within the period of two weeks from date, the same would be considered by the appellate authority uninfluenced by the question of delay.

16. The petition is disposed of in the aforesaid terms. The pending application also stands disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 03, 2024

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Click here to check corrigendum, if any