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

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Date of Decision : 16.07.2024+ **W.P.(C) 9454/2024 CM APPL. 38765/2024**

M/S STEELMART INDIA

.....Petitioner

Through: Mr.Pranay Jain and Mr.Karan Singh,
Advocates.

versus

PRINCIPAL COMMISSIONER OF GOODS AND
SERVICES TAX, SOUTH DELHI

.....Respondent

Through: Ms.Sonu Bhatnagar, Sr SC,
Ms.Nishtha Mittal, Ms.Apurva Singh,
Ms.KS Marry Jonet, Advocates.**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 the show cause notice dated 26.06.2024 (hereafter *the impugned SCN*) whereby the petitioner was called upon to show cause as to why its GST registration number not be cancelled and its GST registration was suspended from the date of the impugned SCN.

2. The petitioner was registered with GST authorities with effect from



03.08.2023 and was assigned the Goods and Services Tax Identification (GSTIN) – No.07CSUPA0997G1ZC. The Proper Officer proposed to cancel the petitioner’s GST registration and issued the impugned SCN.

3. There are two reasons reflected in the impugned SCN for proposing to cancel the petitioner’s registration. The same are set out below:

4. The first reads as *“returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017”*; and the second reads as *“On the basis of information received vide Memo no.762/Ward-4 dated 12.06.2024, from the Deputy Commissioner of State Tax, Jhajjar informing that on physical verification, the entity was found non-existent/non-functional at the principal place of business.”*

5. In addition, the Proper Officer also made observation to the effect that bonafides of the petitioner (registrant) are not established and it appears that it is engaged in fake transactions.

6. The petitioner was also called upon to furnish the reply to the impugned SCN within thirty days from the date of the service of the notice. The petitioner was also directed to appear before the Proper Officer on 26.07.2024 at 12:30PM. The petitioner was put to notice that if it fails to furnish the reply within the stipulated time or fails to appear for personal hearing on the appointed date and time, the case would be decided *ex parte* on the basis of the available records and on merits.

7. The petitioner challenges the impugned SCN on the ground that it has not received the Memo no.762/Ward-4 dated 12.06.2024 (hereafter *the*



Memo) mentioned in the impugned SCN; therefore, was unable to respond to the said notice.

8. Ms. Bhatnagar, learned counsel for the respondent fairly states that although the impugned SCN is founded on the basis of the Memo and the petitioner is expected to respond to the same, but a copy of the same was not communicated to the petitioner. She seeks to rely upon the counter-affidavit, which has since been filed, but is not on the record as it is lying under objection. A copy of the counter affidavit has been handed over in Court.

9. She submits that the impugned SCN reveals that the investigations reveal that the petitioner was involved in the activity of passing fake Input Tax Credit. The relevant extract of the counter affidavit, which sets out the allegations against the petitioner is reproduced below:-

“The Form GST REG-31/ Show Cause Notice was issued to the Petitioner fir, as preliminary investigations revealed that they were engaged in the activity of passing fake Input Tax Credit (hereinafter referred to as “ITC”) to the tune of Rs.4,06,28,221/- to the dealer i.e., M/s. Kaiser Industries holding Bahadurgarh Limited, GSTIN: 06AABCK0456GIZV and the petitioner firm was found non-existent/non-functional during investigation by way of inspection/physical verification conducted by the officer of Deputy Excise & Taxation Department, Government of Haryana, Jhajjar, Haryana, the department is liable to cancel the GST registration Suo-Moto with effect from date of registration under Section 29(2)(e) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"). Therefore, the actions of the proper officer are within the framework of the laid down law.”



10. She submits that the Memo does not include any particulars or details other than that mentioned in the counter-affidavit and as noted above.

11. In view of the above, we find merit in the petitioner's contention that the petitioner that the impugned SCN is vulnerable as it does not set out the allegations on the basis of which the petitioner's GST registration is proposed to be cancelled.

12. It is relevant to note that the object of a show cause notice is to enable the noticee to respond to the allegations. In the present case, the petitioner is now duly informed about the allegations on the basis of which his GST registration is proposed to be cancelled. Although, a copy of the Memo, which is referred to in the impugned SCN has not been provided to the petitioner, the learned counsel for the respondent has, in unambiguous terms, stated that the allegations as noted in the counter-affidavit and as noted above, are the only allegations set out in the Memo. Therefore, the petitioner is now fully aware of the contents of the Memo.

13. In the given facts, setting aside the impugned SCN would serve little purpose apart from the requiring the respondent to once again carry out the exercise of issuing a show cause notice.

14. In the given facts, we consider it apposite to dispose of the petition by permitting the petitioner to respond to the allegations as set out in the counter-affidavit and reproduced hereinbefore. The same may be read as incorporated in the impugned SCN. The petitioner is at liberty to respond to the same within a period of four working days from date. The petitioner / his authorised representative shall appear before the Proper Officer at the



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appointed date and time – 12.30PM on 26.07.2024. The Proper Officer shall consider the petitioner’s contention and take an informed decision.

15. Since the GST registration of the petitioner has been suspended, we request the Proper Officer to take appropriate decision as expeditiously as possible and preferably within a period of one week from 26.07.2024. The Proper Officer is also at liberty to call for any other material / document as may be considered necessary.

16. The petition stands disposed of in above terms. Pending application also stands disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 16, 2024

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Click here to check corrigendum, if any