

Delhi High Court

Bimal Kothari vs Assistant Commissioner (Dsgst) & ... on 1 November, 2022

NEUTRAL CITATION NO: 2022/DHC/004709

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*IN THE HIGH COURT OF DELHI AT NEW DELHI

%Decision delivered

+W.P. (C) 9207/2019 & CM No.37947/2019

BIMAL KOTHARI.

Through:Mr Boudhayan BhattaAnshul Narayan, Adv

versus

ASSISTANT COMMISSIONER (DSGST) & ORS Respondents

Through: Mr Shourya Dasgupta, Adv. for R-1.

Mr Harpreet Singh, Sr. Standing Counsel with Ms Suhani Mathur, Adv. for R-2.

Mr Jivesh Kumar Tiwari and Ms Samiksha, Advs. for R-5/UOI.

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. Although notice in the matter was issued on 26.08.2019, we find that the counter-affidavit filed by respondent no.1 is not on record. 1.1. However, Mr Shourya Dasgupta, who appears on behalf of respondent no.1, has placed before us a hard copy of the counter-affidavit.
2. For the purposes of good order and record, the Registry will scan and upload the copy of the counter-affidavit made available to us so that the Signature Not Verified MOHAN CHOUDHARY Signing Date:08.11.2022 12:25:19 NEUTRAL CITATION NO: 2022/DHC/004709 same remains embedded in the case file.
3. This writ petition is directed against the order dated 17.12.2018 passed by respondent no.1. Via the said order, the petitioner's GST registration has been cancelled.

4. The record shows that a show cause notice was served on the petitioner, which required him to appear before the concerned authority. The show cause notice is dated 04.12.2018.

4.1. A perusal of the show cause notice shows that the petitioner was required to appear before the concerned officer on 12.12.2018 at 11:03 A.M.

5. It is the petitioner's case that cancellation of registration has been brought about on account of the fact that the petitioner was not found to be in existence at the address available with respondent no.1. This aspect of the matter is not disputed by Mr Dasgupta.

6. The writ petitioner, though, avers that in and about June 2018, an application had been filed with the concerned authority indicating the fact that the petitioner had relocated its principal place of business.

7. Furthermore, Mr Boudhayan Bhattacharya, who appears on behalf of the petitioner, has drawn our attention to the reply dated 07.12.2018. This reply was sent, according to the petitioner, in response to the show cause notice dated 04.12.2018.

7.1. A perusal of the reply does indicate that the petitioner took the stand that there was a relocation of its place of business. Both addresses, i.e., the address available with respondent no.1 and the new address are alluded to in the reply dated 07.12.2018.

8. On the other hand, Mr Dasgupta submits that insofar as the application for amendment is concerned, since a reference number was not Signature Not Verified MOHAN CHOUDHARY Signing Date:08.11.2022 12:25:19 NEUTRAL CITATION NO: 2022/DHC/004709 generated it could not have been considered. 8.1 Likewise, insofar as the reply dated 07.12.2018 is concerned, Mr Dasgupta submits that since it was not uploaded on the designated portal, it could not have been considered by the concerned authority.

9. We have queried Mr Dasgupta as to whether the provisions of Rule 25 of the Central Goods and Services Tax Rules, 2017 [in short, "2017 Rules"] were adhered to, since the counter-affidavit adverts to physical verification report dated 04.12.2018, apparently prepared by the Value Added Tax(VAT) inspector. It cannot be disputed that Rule 25 provides for a statutory regime in cases where the proper officer is satisfied that physical verification of the assessee's business premises is required to be carried out. Mr Dasgupta fairly concedes that the counter-affidavit is silent on this aspect.

10. Rule 25 of 2017 Rules reads as follows :

"25. Physical verification of business premises in certain cases.- Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the

presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification."

[Emphasis is ours] 10.1. As would be evident, the said rule provides that where a proper officer is satisfied that physical verification of the place of business of a person is required due to failure of Aadhaar authentication, before the grant Signature Not Verified MOHAN CHOUDHARY Signing Date:08.11.2022 12:25:19 NEUTRAL CITATION NO: 2022/DHC/004709 of registration or due to any other reason after the grant of registration, such physical verification of the place of business, if deemed necessary, is to be carried out in the presence of the said person.

10.2. Furthermore, after physical verification is carried out, a report generated in that behalf along with other documents, including photographs, is required to be uploaded in FORM GST REG-30 on the common portal within 15 days following the date of such verification.

11. As is evident, in the instant case, the concerned officer deemed it necessary to carry out physical verification of the petitioner's place of business before proceeding to pass the impugned order, which resulted in, as noticed above, in the cancellation of the petitioner's registration. 11.1. Concededly, no notice was issued to the petitioner requiring, as mandated by Rule 25, his presence at the time of verification. 11.2. Furthermore, it appears that the verification report, though generated, has not been uploaded, as required, in FORM GST REG-30 on the common portal. As noted above, the period stipulated for the same is 15 days commencing from the date when physical verification is carried out.

12. This issue stands covered by the following judgments rendered by this court:

(i) Judgment dated 26.04.2022, passed in W.P.(C)No.8451/2021, titled Micro Focus Software Solutions India Pvt. Ltd. v. Union of India & Anr.

(ii) Judgment dated 26.08.2022, passed in W.P.(C)No.10408/2022, titled Curil Tradex Pvt. Ltd. v. The Commissioner, Delhi Goods And Service Tax & Anr.

13. Given this position, in our view, the impugned order cancelling the petitioner's GST registration cannot be sustained.

Signature Not Verified MOHAN CHOUDHARY Signing Date:08.11.2022 12:25:19 NEUTRAL CITATION NO: 2022/DHC/004709 13.1. It is ordered accordingly. Resultantly, the petitioner's GST registration shall stand restored.

14. Besides this, the respondents/revenue will also accord to the petitioner a leeway of eight weeks to upload the returns for the period during which its registration stood cancelled.

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

16. Consequently, the pending application shall stand closed.

(RAJIV SHAKDHER) JUDGE (TARA VITASTA GANJU) JUDGE NOVEMBER 1, 2022 aj [Click here](#)
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