



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

WRIT PETITION No. 31219 of 2024

***M/S EMPIRE STEEL HOLDINGS THROUGH PROPRIETOR MRS.
AKRITI MISHRA***

Versus

UNION OF INDIA AND OTHERS

Appearance:

Shri Vashistha Narayan Dubey - Advocate for the petitioner.

Shri Prasanna Prasad - Advocate for the respondent No.5.

Reserved on : ***15.04.2025***

Delivered on : ***24.04.2025***

ORDER

Per: Justice Vivek Rusia

01. The petitioner has filed the present petition being aggrieved by an order dated 29.05.2023 passed by the Superintendent Officer (respondent No.5), an order dated 03.08.2023 passed by Deputy Commissioner (respondent No.4), an order dated 25.04.2024 passed by Joint Commissioner (respondent No.3) and show-cause notice dated 25.07.2024 issued by Joint Commissioner (respondent No.3).

The facts of the case in short are as under:

02. The petitioner is a proprietorship firm engaged in the trading of taxable goods i.e. flat-rolled products of iron or non-alloy steel. The petitioner is registered with the GST bearing GSTIN No.23BNQPM0072E1Z7 w.e.f. 03.10.2017. Mrs. Akriti Mishra is a



proprietor of the firm handling the business with the assistance of her husband Mr. Ashutosh Tiwari. As per records of the respondents, the registered office of the firm is situated at the 1st Floor, Orbit Mall, A.B. Road, Indore - 452001 (M.P.). According to the petitioner, due to health issues of her husband, the business was slowed down and she could not operate it properly, she was unable to bear the rent of the premises, hence she had to shift the business operation to her residential address at 516, BRG Sangrila Talawali Chanda, Indore - 452001 (M.P.) from November 2022. The petitioner also possesses the Gumasta License issued by the District Labour Officer on 16.07.2023.

03. According to the respondents, a proper officer of the SGCT department conducted the physical operation on 15.05.2023 at a registered place of business i.e. 1st Floor, Orbit Mall, A.B. Road, Indore - 452001 (M.P.) of the petitioner but the same was found locked, therefore, a show cause notice dated 17.05.2023 was issued for cancellation of registration of license due to “Discrepancies noticed while the conduct of Physical Verification”. The petitioner was given three days time to file a response to the said show cause notice. Vide order dated 29.05.2023, the petitioner’s registration was cancelled with retrospective effect from 04.10.2017.

04. Being aggrieved by the aforesaid order, the petitioner filed an application dated 05.07.2023 along with all supported documents for revocation of the order of cancellation of registration. The said application was forwarded to the jurisdiction authority who issued another show cause notice dated 24.07.2023 as to why the application be not rejected. The petitioner submitted a reply to the show cause notice. Vide order dated 03.08.2023, the Deputy Commissioner has rejected the



application for revocation of cancellation while recording reasons of Non-Genuineness of the Party.

05. Being aggrieved by the aforesaid order, the petitioner preferred an appeal on 02.09.2023 before the appellate authority. The respondent has initiated further proceedings for imposition of penalty due to cancellation of registration from the back date by issuing a show cause notice dated 25.07.2024. Hence, this writ petition before this Court.

06. After the issuance of a notice, the respondent filed the preliminary reply supporting the impugned action. Amid arguments, Shri Prasanna Prasad, learned counsel appearing for the respondents has produced the original record of the case.

07. Shri Vashistha Narayan Dubey, learned counsel for the petitioner submitted that the action of the respondents cancelling the GST registration is arbitrary and unjustified. The inspection was carried out behind the back of the petitioner in violation of the rules. It is further submitted that the GST registration is liable to be cancelled or suspended under Section 29 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “Act of 2017”), in the said provision, there is no such reason or ground for cancellation of the registration as has been done in this case i.e. discrepancies noticed while the conduct of physical verification. The petitioner has been doing the business from her residential address which has not been verified by the competent authority. The documents regarding the GSTRs, business transactions and the tax paid by the petitioners were submitted before the competent authority along with an application for revocation of cancellation but none of them have been considered.

08. It is further submitted by the learned counsel of the petitioner that it is not a case of the respondents that the petitioner availed the input tax



credit without undertaking any business, whereas the petitioner had paid the input tax credit in cash. Due to unavoidable circumstances, the petitioner had to shift the place of business from 1st Floor, Orbit Mall, A.B. Road, Indore - 452001 (M.P.) to her residence at 516, BRG Sangrila Talawali Chanda, Indore - 452001 (M.P.) hence, the said premises was found locked. In support of its contention, Shri Dubey, learned counsel has placed reliance on a judgment passed by the Division Bench of the High Court of Delhi at *New Delhi Roxy Enterprises v/s Union of India and others reported in 2023 SCC OnLine Del 8337* and the judgment passed by Allahabad High Court in case of *M/s Shyam Sundar Sita Ram Traders v/s State of U.P. and two others reported in Neutral Citation 2023 ASC 60053*.

09. Per contra, Shri Prasad, learned counsel for the respondents argued that the petition has been rendered infructuous because the show cause notice dated 26.07.2024 has been adjudicated by passing an Original In Order (OIO) on 31.12.2024. However, the order has been passed in favour of the petitioner and against the respondents in part by dropping the penalty of Rs.6,17,33,624/- under Section 122 of the Act of 2017. The department is considering challenging the said order by way of appeal.

10. It is further submitted by the learned counsel of the respondents so far as the cancellation of GST license is concerned that the Officer of Jurisdictional Division Office visited the principal place of business of the petitioner at 1st Floor, Orbit Mall, A.B. Road, Indore - 452001 (M.P.), also visited the amended place of business at Flat No.303, E-Block, Dream City, A.B. Road, Indore on 16.05.2023 but same were found locked and non-operative. The Officer contacted the owner of the flat Shri Dinesh Gupta on his mobile who informed him that he does not



know anything about the firm namely M/s Empire Steel Holdings and Akriti Mishra. The GST R-2A returns of the period 2017 to the financial year 2022-23 were examined and found that the petitioner availed the ITC amounting to Rs.2,95,49,215/-. Since the palace of business of the petitioner was found non-existent/non-operational, therefore, it is presumed that the petitioner had wrongly availed and utilized the aforesaid amount of GST by way of fake and ineligible GSTR-3V returns. Hence, no interference is liable to be made and the petition is liable to be dismissed.

We have heard learned counsel for the parties at length and perused the record.

11. Since the show cause notice has been adjudicated partially in favour of the petitioner hence only issue regarding the cancellation of the GST license of the petitioner is being considered in this writ petition. The entire process for cancellation of the license was initiated after the visit note prepared by Shri Avinash Joshi, Superintendent, CGST and C.X.Range-2 Division IV Indore. As per this visit note, the place of business showing at 1st Floor, Orbit Mall, A.B. Road, Indore - 452001 (M.P.) on the portal as well as GST.gov.in was found locked and the display board showing the name of the firm is Suman Services. On being asked/enquired to some shops situated at 1st Floor, Orbit Mall, A.B. Road, Indore, no such firm is working at the given address and nothing to do about the M/s Empire Steel Holdings or Akriti Mishra. However, the officer did not record the statements of the nearby shop owners. This visit note is only signed by Shri Avinash Joshi not by any other witness. Shri Joshi ought to have recorded the statement of the nearby shop owner and obtained their signature in the visit notes as a witness. It appears that no one was accompanied with him from the GST



department on 15.05.2023 at the time of the search. Had any person visited with him, he would have countersigned this visit note, therefore, such a visit note cannot be relied on for taking such a drastic action of cancellation of license.

12. In the case of ***Roxy Enterprises*** (*supra*), the Division Bench of the High Court of Delhi has considered Rule 25 of GST Rules 2017 which deals with the physical verification of business premises in certain cases. According to Rule 25, the physical verification of the business premises should be done in the presence of the person, and it should be uploaded in the form GST REG-30 on the common portal within 15 working days following the date of such verification. Apart from the above, all these grounds on which the registration of the petitioner has been cancelled have already been criticized by the Joint Commissioner of CGST and Central Excise Indore in its order dated 31.12.2024 whereby show cause notice for imposing a penalty of Rs.6,17,33,624/- has been dropped. The Para 2.3 of the order is reproduced below:

"2.3. Action taken on the Input.

The officers of Jurisdictional division office, visited the registered principal place of business of M/s. Empire Steel Holdings, (Legal Name: Smt. Akriti Mishra), 1st Floor, 163, Orbit Mall, A.B. Road, Indore-452010(GSTN-23BNQPM0072E1270) on 15.05.2023 (RUD-I to SCN) under Section 25 of CGST Act, 2017. During the verification, the principal place of business at Orbit mall found locked and the display board showing name of the firm M/s. Suman Services and no GSTIN mentioned on display board. On enquired from some neighboring shops situated at 1st floor of Orbit Mall that the no such firm is working at 1st Floor, 163, Orbit Mall, A.B.Road, Indore-452010.

Further, officers of Jurisdictional division office, visited the amended principal place of business at Flat No.303, E-Block, Dream City, A.B.Road, Indore-453771 on 16.05.2023 but the same was found locked. The officers searched the mobile number of Flat Owner Shri Dinesh Gupta and talk to Shri Gupta on their Mobile No. 94835-51458. Shri Gupta informed that he does not know anything about Akriti Mishra and M/s. Empire Steel Holdings and never given Flat No. 303, Dream City to any Akriti Mishra or M/s. Empire Steel Holdings for business purpose.



Further, M/s Empire Steel Holdings has applied for revocation of cancelled registration vide reference number ZA2305231101391 dated 29.05.2023. According, proprietor of the firm Smt. Akriti Mishra appeared and submitted their reply dated 27.07.2023 (RUD-II to SCN). On examination of the submitted documents, it is noticed that the submitted rent agreement of the period from May-2017 (valid for 11 months) is not related with the firm M/s. Empire Steel Holdings or proprietor of the firm Smt. Akriti Mishra. The said agreement was executed between Smt. Anika Karve (owner of the premises situated at 163, 1st floor, Orbit Mall, PU-4, Scheme No. 54, A.B.Road, Indore) and M/s. Almentam Health Care Pvt Ltd & M/s. Astro Ashiwani (concerned person name mentioned in said agent Shri Ankit Alaya).

Subsequently, Personal Hearing opportunity was issued by Deputy Commissioner, CGST & CEx. Division-IV Indore to Smt. Akriti Mishra in which she could not produce any other documents related to address proof of principal place of business where she was doing business since 03.10.2017. She verbally informed that there was mutual consent between her and Shri Ankit Alaya but she did not execute any agreement during entire period. On further being enquired, Smt. Mishra could not produce any bank entry of the rent paid by her to Shri Ankit Alaya. Hence, registration was not revoked.

Thus, it revealed that M/s. Empire Steel Holdings is found non-existent and non operational.

Further, Noticee has filed an appeal before Commissioner (Appeal) and Joint Commissioner(Appeals), who disallowed the Noticee appeal of the Noticee vide OIA NO IND-CGST-JC-APP-40-2024-25 dated 25.04.2024(RUD-III to SCN) as the Noticee has failed to prove the genuineness of their firm."

13. Thereafter, the Joint Commissioner has considered the GSTR 2A submitted by the petitioner and legal provisions like Sections 16, 20, 122, and 155 of the Act of 2017. The learned Joint Commissioner discussed the issue and recorded its findings in Para 5 and held that no penalty is liable to be imposed. Para 5.6 is reproduced below:

"5.6. I also find from the case records that physical copy of Show Cause Notice issued to the Noticee was returned undelivered by the Postal Department from the Principal Place of Business with remarks "Left". However, the GST-DRC-01 was uploaded on GST Portal under Reference No. ZD230724025775B dated 29.07.2024 and Notice of Personal Hearing was issued through GST Portal electronically for 05.09.2024 as the Noticee was found non-existent/non-operational at the Principal Place of Business, wherein the Authorised Representative for the Noticee appeared for Personal Hearing on 05.09.2024.



Further, as per request of the Noticee during Personal Hearing on 05.09.2024, subsequent Personal Hearing Notices for 07.11.2024 & 22.11.2024 were sent on Address Le. 516, BRG Sangila, Talawali Chanda, Indore, which were delivered by the Postal department and further submission made by the Noticee along with supporting documents and records at the time of Personal hearing by Authorised Representative and Husband of the Noticee on 13.12.2024,

Thus, as per above records i.e. Physical appearance of the Proprietor i.e. Smt. Akriti Mishra before the Jurisdictional Central GST Range Officer as well as the Jurisdictional Central GST Divisional Officer after cancellation of the GST Registration for revocation, filing of Writ Petition No. 31219/2024 on 04.11.2024 before the Hon'ble High Court of Madhya Pradesh Bench at Indore by the Noticee and appearance of Authorised Representative & Husband of the Noticee, I find that though the business of the Noticee was non-operational at the registered Principal Place of Business, but the Noticee i.e. Smt. Akriti Mishra (Proprietor) is in existence."

14. The learned Joint Commissioner has also recorded the finding that though the business of noticee was non-operational at the registered principal place of business noticee Smt. Akriti Mishra is in existence for which a valid explanation was given by her and also concluded that no investigation was conducted to verify the genuineness of the transaction i.e. inward and outward supply of the noticee before issuance of the show cause notice. The learned Commissioner has already examined the GSTR 2A for the financial year 2017-18 to the financial year 2022-23 in detail and reproduced in the order and held that the supplier of the noticee is in existence and active which reflects the genuineness of the purchase (inward supply of the noticee from the end of supplier). The entire impugned action of the respondents is based on the presumption that the firm is bogus because the office / place of business was found locked.

15. In view of the aforesaid finding recorded by the Joint Commissioner of the respondents, the order dated 29.05.2023 passed by the Superintendent Officer (respondent No.5), the order dated 03.08.2023 passed by Deputy Commissioner (respondent No.4), and the



order dated 25.04.2024 passed by Joint Commissioner (respondent No.3) are unsustainable and liable to be quashed and are hereby *quashed*. The registration license of the petitioner is hereby restored from its date of issuance.

16. Accordingly, this Writ Petition stands **allowed** with a cost of **Rs. 10,000.00/- (Rupees Ten Thousand Only)** payable to the petitioner.

(VIVEK RUSIA)
JUDGE

(GAJENDRA SINGH)
JUDGE

Divyansh