

**Court No. - 10**

**Case :-** WRIT TAX No. - 542 of 2023

**Petitioner :-** M/S Genius Ortho Industries

**Respondent :-** Union Of India And 2 Others

**Counsel for Petitioner :-** Hari Shanker Srivastava, Nikhil Srivastava, Tanisha Jahangir Monir

**Counsel for Respondent :-** A.S.G.I., Amit Mahajan, Sudarshan Singh

**Hon'ble Piyush Agrawal, J.**

1. Hears Ms. Tanisha Jahangir Monir, learned counsel for the petitioner and Sri Amit Mahajan, learned counsel for the respondent nos. 2 & 3 and Sri Sudarshan Singh, learned counsel for the respondent no.1.
2. By means of instant writ petition, the petitioner has assailed the order dated 27.02.2023 passed by Joint Commissioner (Appeal) (GST Appeal) Meerut, in Appeal No.36-CGST/APL-MRT/GZB/2022-23/600 as well as order dated 19.12.2022 passed by respondent no.3 in Reference No.ZA091222137398F.
3. This Court vide its order dated 29.02.2024 dismissed the present writ petition against which Special Appeal No.647 of 2024 was filed before the Division Bench of this Court and the same was allowed vide order dated 08.08.2024 and the matter was remanded for deciding on merits.
4. Learned counsel for the petitioner submits that the petitioner, which is duly registered under the GST Act, is engaged in the business of surgical goods etc. She further submits that the business premises of the petitioner was surveyed on the basis of which, a show cause notices were issued for cancellation of registration of the petitioner on the ground of discrepancy noticed in physical verification and thereafter, the reply was submitted, but not being satisfied from the reply, the registration of the petitioner was cancelled on 19.12.2022 on the ground that no reply was submitted for non-availability of any input, finished goods or worker in the registered premises. Against the said order, an appeal was filed, which has also been dismissed by the impugned order.
5. She further submits that the petitioner was never put to any notice about the material found against the petitioner during the said survey of the business premises whereby the registration of the petitioner has been cancelled and therefore, the orders impugned were passed in gross violation of principle of natural justice, as well as the appellate authority also failed to consider the same.
6. Rebutting to the said submission, Sri Mahajan, learned counsel for the

respondents supports the impugned orders by submitting that the petitioner had due knowledge about the discrepancy found at the time of physical verification and it is incorrect on the part of the petitioner to submit that they were never put to any notice, rather the notice was issued and reply thereto was submitted and wherein, no reason has been assigned for the discrepancy found at the time of survey and therefore, the order has rightly been passed.

7. In support of his submission, he has placed reliance upon Division Bench Judgment of this Court passed in the case of ***Star Cranes 400/7 Beind Azad Vs. Union of India and Another (Writ Tax No. 1512 of 2024)*** and submits that no writ is required to be issued against the order of cancellation in favor of the petitioner.

8. Rebutting to the said submission, Ms. T.J. Monir has placed reliance upon the judgments of Delhi High Court passed in the cases of ***M/S. Balaji Enterprises Vs. Principal Additional Director General Directorate General of GST Intelligence and ors. [W.P. (C) 10315/2022]*** and ***Vijay Sales Enterprises Vs. Superintendent Range-25, GST Division, New Delhi [W.P.(C) 13596/2023 & CM Appl.53641/2023]*** and submits that once there is no allegation for obtaining the registration by means of fraud, wilful misstatement, the registration cannot be cancelled.

9. She further submits that the petitioner was never put to notice for the material found against the petitioner before cancellation of registration on the ground mentioned in the impugned orders. She prays for allowing the present writ petition.

10. After hearing the parties, the Court has perused the record.

11. It is not in dispute that the notice was issued on 13.12.2022 for cancellation of registration with one sentence discrepancies noticed while physical verification, a copy of which has been annexed as **Annexure No.1** to which a reply was submitted. The cancellation order passed on 19.12.2022. The relevant part of the said order is read as under:-

***"1. No reply submitted to non-availability of any input, finished goods or worker in the registered premises. Hence, registration cancelled as per physical verification as no activity was found there"***

12. In the counter affidavit, at page no.19, it has clearly been mentioned that on being enquired during the physical verification of the premises, the watchman told **"Kabhi Kabhar Chalti Hai"**, which shows that the activities of business were being undertaken by the petitioner but without giving due weightage to the specific statement made by the watchman, the impugned order has been passed. Once the fact was recorded as to whether the business activities were being undertaken, no contrary material has been brought on record, the impugned orders cannot be sustained in the eyes of law.

13. Further, the record shows that the material used against the petitioner for cancellation of registration, no notice was ever put to the petitioner, rather in the counter affidavit, a statement has been made that as per Rule 25, reports are available on GST Portal in Form GST REG-30. But in the show cause notice, no mention has been made and thus, as per form- GST REG-30 the action is taken against the petitioner. Therefore, on this ground also, impugned order cannot be sustained.

14. Accordingly, the impugned orders are hereby quashed.

15. In view of the above facts as stated, the matter requires re-consideration.

16. In the result, the writ petition is ***allowed***. The matter is remanded to the authority concerned for deciding afresh by passing a reasoned and speaking order, after hearing all the stakeholder as well as giving the due opportunity and liberty to the petitioner herein to adduce and produce relevant evidence and material in his favour, within a period of three months from the date of production of certified copy of this order.

17. Any amount deposited by the petitioner pursuant to the impugned orders, shall be subject to the outcome of the fresh order to be passed by the authority concerned.

**Order Date :- 24.4.2025**

Pravesh Mishra