Draft Reply to Notice for Cancellation of GST Registration

To,

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Sub: Reply to Show Cause Notice in case of M/s .....& GSTIN: .....

Ref: Your Notice dated ..... SCN: .....

Respected Sir/Madem,

1. We, M/s ....., trader of ..... Located at ..... , ..., are in receipt of above mentioned Notice for cancellation of our GST Registration on the grounds of non-compliance of Specified provisions of GST Laws.

You have not complied with the specified provisions of the GST Act or Rules, and therefore, the registration under GST is liable to be cancelled with retrospective effect.

The detailed reasons for cancellation of your GST Registration are as follows:

(i) .....

(ii) .....

(iii) .....

(iv) .....

2. We would like to contest this Notice on the following grounds:

- We have obtained registration on proper and correct documents.
- We have followed all provisions of GST Laws.
- That the Notice is vague and deprived of specific details of contraventions for which the cancellation is proposed.

3. Relevant provisions of GST Laws:

Section 29: Cancellation or suspension of registration.–

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,-

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under sub-section (3) of section 25:

Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return]; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a such continuous tax period as may be prescribed; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

Rule-21. Registration to be cancelled in certain cases. –

The registration granted to a person is liable to be cancelled, if the said person, –

(a) does not conduct any business from the declared place of business; or

(b) issues invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder; or

(c) violates the provisions of section 171 of the Act or the rules made thereunder.

(d) violates the provision of rule 10A

(e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or

(f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or

(g) violates the provision of rule 86B.

(h) being a registered person required to file return under subsection (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months;

(i) being a registered person required to file return under proviso to subsection (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.

(3) the cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

Rule 21A. Suspension of registration. –

(1) Where a registered person has applied for cancellation of registration under rule 20, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceedings for cancellation of registration under rule 22.

(2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.

(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

(a) the details of outward supplies furnished in FORM GSTR-1; or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of

registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.

(3) A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2) or sub-rule (2A), shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.

Explanation. – For the purposes of this sub-rule, the expression "shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.

(3A) A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A),shall not be granted any refund under section 54, during the period of suspension of his registration.

(4) The suspension of registration under sub-rule (1) or sub-rule (2) or sub-rule (2A) shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect.

Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

Provided further that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29 and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

(5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

Rule 22. Cancellation of registration. –

(1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled.

(2) The reply to the show cause notice issued under sub-rule (1) shall be furnished in FORM REG-18 within the period specified in the said sub-rule.

(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-19, within a period of thirty days from the date of application submitted under rule 20 or, as the case may be, the date of the reply to the show cause issued under sub-rule (1), or under sub-rule (2A) of rule 21A cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.

(4) Where the reply furnished under sub-rule (2) or in response to the notice issued under sub-rule(2A) of rule 21A is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG -20:

Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20.

(5) The provisions of sub-rule (3) shall, mutatis mutandis, apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

Discussions and Submissions

4. We would like to place our reliance on the following Judgments of various High Courts in support of our case.

Matter-1: Stock Not found at Taxpayer's Premises:

• The Judgment of the Honourable Allahabad High Court in the case of **M/S SHREE RAM GLASS BACHAULI KUFTABAD BEEKAPUR THRU. PARTNER SHREE AMAN JAISWAL vs. STATE OF U.P. AND 2 OTHERS(ALL-HC) :(2024) 74 TLC(GST) 122,** Writ -C- No. 1346 of 2024 dated 16-02-2024.

HELD- Partnership Firm Challenges GST Registration Cancellation; Court Sets Aside Orders as Illegal and Arbitrary, Rules Assessee's Registration Can't be Cancelled Solely for Absence of Stock at Registered Business Place.

Matter-2: Retrospective Cancellation for Non-Filing of Returns:

• The Judgment of Delhi High Court in the case of **RAMESH CHANDER vs. ASSISTANT COMMISSIONER OF GOODS AND SERVICE TAX (DEL-HC) :(2024) 73 TLC(GST) 099,** WPC No. 822 of 2024; dated 19-01-2024.

HELD - GST Registration Retroactively Cancelled Without Clarity; Appellate Authority Overturns Limitation-Based Dismissal, Orders Restoration, Affirms Registration Cannot Be Voided for Non-Filing of Returns Beyond Six Months.

• The Judgment of Delhi High Court Judgment in case of **ARYAN TIMBER STORE THROUGH ITS PROP VIRENDER KUMAR vs. SALES TAX OFFICER CLASS II (DEL-HC) :(2024) 73 TLC(GST) 114,** Writ Petition (C) No. 628 of 2024 dated 18-01-2024.

HELD - Petition Challenges Retrospective GST Registration Cancellation; Court Modifies Effective Date to 06.05.2019, Clarifies Registration Cannot Be Cancelled Retrospectively Due to Non-Filing of Returns; Allows Recovery Proceedings.

• The Judgment of Madras High Court Judgment in case of **MOHANA BLUE METAL vs. THE ASSISTANT COMMISSIONER (MAD-HC) :(2023() 72 TLC(GST) 144,** Writ Petition No. 32728 of 2023 dated 14-12-2023.

HELD - GST Registration Cancellation Overturned: Court Upholds Petitioner's Challenge, Directs Restoration and Dues Payment; Emphasizes Non-Retrospective Cancellation in Cases of Genuine, Unintentional Non-Filing.

Matter-3: Non-Existence of Business at Disclosed Location

• The Allahabad High Court Judgment in case of **STAR METAL COMPANY vs. ADDITIONAL COMMISSIONER GRADE-2 AND ANOTHER (ALL-HC) :(2023) 65 TLC(GST) 018**, Writ Tax No. 397 of 2023 dated 19-05-2023.

HELD - Proprietorship Firm's GST Registration Cancellation Quashed by Court; Order Passed Without Specific Violation Mentioned Deemed Unsustainable.

• The Kerala High Court in the case of **F R TRADE LINKS vs. THE STATE TAX OFFICER (KER-HC) :(2021) 44 TLC (GST) 039,** WP (C) No. 28917 of 2020 dated 05-08-2021.

HELD - The High Court Quashes GST Registration Cancellation; Orders Restoration Due to Procedural Lapses Despite Assessee Providing Building Tax Receipt as Proof of Business Authenticity, Intelligence Officer Report Insufficient.

Matter-4: GST Registration obtained on Misstatement and Suppression of Facts

• The Judgment of Delhi High Court in case of **M/S. RADHEY TRADING COMPANY vs. PRINCIPAL COMMISSIONER OF GOODS AND SERVICES TAX (DEL-HC) :(2024) 73 TLC(GST) 024,** WP (C) No. 143 of 2024 dated 05-01-2024

HELD- The High Court Quashes Retrospective GST Registration Cancellation; Emphasizes No Cancellation Without Detailed Fraud Allegations, Willful Misstatement, or Suppression of Facts; Stresses Objective Criteria and Proper Notice Requirement.

• The Judgment of Andhra Pradesh High Court in case of **S.A. TRADERS vs. THE GST OFFICER, STATE OF ANDHRA PRADESH (AP-HC) :(2022) 59 TLC(GST) 021,** WP No. 36673 of 2022 dated 16-11-2022

HELD - The High Court Quashes GST Registration Cancellation; Finds Lack of Evidence and Procedural Fairness Renders Cancellation Unsustainable, as Neither Order nor Show Cause Notice Establishes Fraud or Misdeed by Petitioner, Contrary to Allegations u/s 29 of CGST Act, 2017/APGST Act, 2017.

Matter-5: Issuance of Invoice without actual supply

• The Judgment of Delhi High Court in case of **NP TRADING COMPANY vs. COMMISSIONER OF GOODS AND SERVIES TAX (DEL-HC) :(2024) 74 TLC(GST) 176,** WP (C) No. 1399 of 2024 dated 09-02-2024

HELD - The High Court Sets Aside CGST Registration Cancellation for Lack of Specifics on Alleged Fake Invoices; Petitioner's Plea Granted, Directs Fresh Adjudication Based on Defective Show Cause Notice.

Matter-6: Additional Information:

• Kindly Enclosed with this response are the requested documents and information, including [list of enclosures, such as financial statements, audit reports, compliance certificates, etc.].

Note: Strike delete the issues which are not relevant.

Conclusion and Request for Relief

5. It is hereby humbly submitted that in our opinion we are not liable for cancellation of GST Registration.

6. We respectfully request that the Show Cause Notice to be reconsidered and withdrawn and allow us consequential relief

7. We respectfully request the department to reconsider the notice in light of the arguments and evidence presented. We are fully cooperative and prepared to provide any additional documentation or clarification as may be required.

8. We would request you to drop the Notice and we would further request you to provide us “Opportunity of Being Heard” before passing any order against us.

Thanks, and Regards

For …….

Authorised Signatory

e-mail id .....

Mobile .....

Note: This Draft reply is write for general informational purposes only. It is not intended to serve as a recommendation, consultation, or advice.

Dated - 15-04-2024.