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

\+ **W.P.(C) 2188/2022 & CM APPLs.6269-6270/2022**

RAKESH KUMAR GARG ..... Petitioner
Through: Mr.Jivesh Tiwari, Advocate.

versus

ASSISTANT COMMISSIONER GST DEPARTMENT WARD NO 207, DELHI & ORS. ..... Respondents
Through: Mr.Naushad Ahmed Khan, Advocate with Mr.Zahid, Advocate.

% Date of Decision: 04th February, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

JUDGMENT

MANMOHAN, J (ORAL)

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed seeking a direction to Respondent No.1 to comply with the order dated 5th April, 2021 passed by the Respondent No.2 in its letter and spirit thereby allowing the petitioner to surrender his GSTIN voluntarily w.e.f. 4th March, 2020 to forebear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the said impugned order dated 30th July, 2021 passed by the Respondent No.1.

3. Learned Counsel for the Petitioner states that the Petitioner sought the cancellation of his GSTIN cancellation on account of his inability to continue his business due to his deteriorating health. He states that the Respondent no.1 vide order dated 15th September, 2020 instead of accepting the genuine request of the petitioner, acted in a completely arbitrary manner and cancelled the GSTIN of the petitioner on suo-moto basis under Section 29(2) of the Act from the date of registration of GSTIN of the Petitioner i.e. 1st July, 2017.

4. Learned counsel for the Petitioner states that the Petitioner appealed the aforementioned order and the Respondent no.2 vide order dated 5th April, 2021 set aside the order passed by the Respondent No.1. He states that the Respondent No.2 also held that the petitioner was entitled to discontinue its business as per his own volition and directed the Respondent No.1 to cancel the GSTIN of the petitioner w.e.f. 4th March, 2020 i.e. from the date the Petitioner had applied for cancellation of registration. But the Respondent No.1, only partially complied with the order and cancelled the registration of GSTIN of the petitioner w.e.f. 4th March, 2020 by invoking its suo motu power.

5. Issue notice. Mr.Naushad Ahmed Khan, learned counsel for the respondents accepts notice. He states that the Petitioner had not filed an appeal against the order dated 5th August, 2020, whereby the Petitioner's application seeking cancellation was rejected.

6. Having heard learned counsel for the parties and having perused the paper book, this Court finds that the Appellate Authority has passed a clear and cogent order. The relevant portion of the order dated 5th April, 2021 passed by the Appellate Authority is reproduced hereinbelow:-

"6. In view of the above facts and circumstances, I am of the considered opinion that taxpayer is entitled to discontinue its business and therefore, present appeal is disposed of with following terms and directions:-

a. Appeal preferred by the taxpayer is hereby allowed;
b. Consequently, impugned order of rejection of application for revocation of cancellation of registration dated 24.11.2020 and order for cancellation of registration dated 15.09.2020 are set aside;

c. Proper officer is directed to cancel the registration of the applicant from the date of the applicant's application for cancellation of registration i. 04.03.2020 immediately after the receipt of this order and to report the compliance to this office;
d. Proper officer is further directed to ensure the above said compliance by the taxpayer."

7. From the aforesaid paragraph, it is apparent that the Petitioner's registration has been cancelled at the request of the petitioner and the Appellate Authority has categorically held that the Petitioner was entitled to discontinue its business. Further, the date of cancellation of registration is from the date the petitioner had applied for cancellation of his registration i.e. 4th March, 2020 and not from the date when its registration was cancelled by the respondent No.1.

8. In view of the aforesaid categorical order of the Appellate Authority, this Court is of the view that the reliance of the respondents on the order dated 5th August, 2020 is misconceived.

9. Accordingly, the present writ petition is allowed and the Respondent No.1 is directed to comply with the order dated 5th April, 2021 by allowing the petitioner to surrender his GSTIN voluntarily w.e.f. 4th March, 2020.

10. With the aforesaid direction, the present writ petition and pending applications stand disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

FEBRUARY 4, 2022
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