2024:DHC:1303-DB

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

% Date of decision: 15.02.2024

\+ **W.P.(C) 2244/2024 & CM. APPL. 9293/2024**

M/S SAGAR ENTERPRISES ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF GOODS AND SERVICE TAX WEST DELHI. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Pranay Jain and Mr. Karan Singh, Advocates.
For the Respondents: Mr. Gibran Naushad, Senior Standing Counsel, CBIC.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J (ORAL)

1. Petitioner impugns order dated 16.01.2024, whereby the GST registration of the petitioner has been cancelled with effect from 15.07.2022.

2. A Show Cause Notice dated 21.12.2023 was issued to the petitioner on the ground that the firm had been found to be non-existent at the registered principal place of business.

3. Learned counsel for petitioner submits that the Show Cause Notice was issued on 21.12.2023 and from the digital signature, it is

clear that the same was signed on 21.12.2023 only at 22:30.42 IST and a date of hearing was fixed as 22.12.2023 at 2 P.M. He further submits that the Show Cause Notice does not mention the name of the authority issuing the Show Cause Notice or the place where the petitioner had to appear. He further submits that the Show Cause Notice required petitioner to furnish a reply within the stipulated time, which was seven days, however, the Show Cause Notice did not give seven days' time to the petitioner to appear and consequently, petitioner could neither appear, nor file a reply to the Show Cause Notice.

4. Issue notice. Notice is accepted by learned counsel appearing for respondents. With the consent of parties, the petition is taken up for final disposal.

5. Perusal of the Show Cause Notice clearly establishes that the Show Cause Notice did not give sufficient time to the petitioner to either respond or appear. The Show Cause Notice also does not mention the name or designation of the officer issuing the same and as such clearly the petitioner was denied an opportunity of representing its case before the Proper Officer.

6. Further, the order of cancellation also is bereft of any reason. It's a two-line order which refers to the Show Cause Notice and states that the effective date of cancellation is 15.07.2022. There is no reason mentioned in the impugned order as to why a retrospective cancellation has been ordered.

7. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. The registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant.

8. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention in this regard is correct, it would follow that the proper officer is also required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

9. In view of the above, the impugned order dated 16.01.2024 is set aside. Petitioner is granted one week's time to file reply to the

Show Cause Notice with the office of the Principal Commissioner of Goods and Service Tax, West Delhi i.e. the respondent, who shall thereafter have the same forwarded to the Proper Officer for adjudication of Show Cause Notice. Thereafter, the proper officer shall adjudicate the Show Cause Notice after giving an opportunity of personal hearing to the petitioner. Adjudication proceedings be concluded within a period of four weeks from the furnishing of reply. It would open to proper officer to direct a fresh inspection of the premises of the petitioner, if so warranted.

10. Petition is disposed of in the above terms. All rights and contentions of parties are reserved.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 15, 2024/ NA