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

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Date of decision: 16.02.2024

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W.P.(C) 2339/2024& CM. APPL. 9695/2024

EM POWER ENGINEERING PRIVATE LIMITED.....Petitioner

Versus

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS &
ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Nishant Mittal and Mr. Laksh Yadav,
Advocates.

For the Respondents: Ms. Sonu Bhatnagar, Senior Standing
Counsel with Ms. Nishtha Mittal and Ms.
Apurva Singh, Advocates.

Mr. Rajeev Aggarwal, ASC for respondents
No.2 and 4.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J (ORAL)

1. Petitioner impugns order dated 19.04.2021, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns the Show Cause Notice dated 11.02.2021



2. Vide impugned Show Cause Notice dated 11.02.2021 petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-

“Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months”

3. Petitioner is a Private Limited Company and has been engaged in business since 2014. Said company had been registered under the DVAT Act and thereafter possessed GST registration.

4. Show cause notice dated 11.02.2021 was issued to the petitioner seeking cancellation of GST registration. The notice does not specify any cogent reason, and merely states “not filed returns for a continuous period of six months.”

5. Further, the impugned order dated 19.04.2021 passed on the show cause notice dated 11.02.2021 does not give any reason for cancellation. It however, states that the registration is liable to be cancelled for the following reason “*whereas no reply to the show cause notice has been submitted.*” Said order in itself is contradictory. Said order states “*reference to your reply dated 19.03.2021 in response to the notice to show cause dated 11.02.2021*” and the reason stated for the cancellation is “*whereas no reply to notice show cause has been submitted & whereas on the day fixed for hearing you did not appear*”. The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date.



6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 19.04.2021 does not qualify as an order of cancellation of registration. On one hand, it states that the registration is liable to be cancelled and on the other, in the column at the bottom there are no dues stated to be due against the petitioner and the table shows nil demand.

7. Learned Counsel for petitioner submitted that the respondents had earlier issued show cause notice for cancellation dated 29.11.2019, however since the returns were filed till September 2019 the registration was not cancelled.

8. He further submitted that another show cause dated 11.02.2021 was issued by which the registration was sought to be cancelled.

9. He further submitted that the petitioner had duly provided details of filing of returns till January 2020, however, petitioner company was unaware of the fact that the accountant of the company had filed returns only till September 2019.

10. He further submitted that the petitioner company suffered major setbacks, due to which the entire management of the petitioner company was in a state of turmoil, and during March 2020 i.e., during the COVID -19 pandemic period petitioner was not able to make compliances in respect to GST returns.

11. As per the petitioner, they became aware of non-filing of returns only in January 2021 i.e. when the Accountant passed away. Learned



counsel submitted that since the Login credentials were not available with the petitioner company they were unable to access and login the said GST portal.

12. We notice that the show cause notice and the impugned order are also bereft of any details accordingly the same cannot be sustained.

13. In terms of Section 29(2) of the Act, 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. 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.

14. It is important to note that, according to the respondent, one of the consequences for cancelling a taxpayer'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 is 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.

15. Further, there is no reasoning in the said show cause notice and in the impugned order as to why the cancellation has been done retrospectively.

16. In view of the above the petition is allowed. The impugned show cause notice dated 11.02.2021 and order of cancellation dated 19.04.2021 are accordingly set aside. The GST registration of the petitioner is restored. Petitioner shall comply with Rule 23 of Central Goods and Service Tax Rules, 2017. Petitioner shall file all requisite returns and pay the tax, if any, within a period of 30 days from today.

17. It is clarified that respondents are also not precluded from taking any steps for recovery of any tax, penalty or interest that may be due from the petitioner in accordance with law.

18. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 16, 2024

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