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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 19.02.2024

+ **W.P.(C) 2352/2024 & CM. APPL. 9718/2024**

RAJENDRA PROP. RAMP WELDSAFE AND METAL
INDUSTRIES

..... Petitioner

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX
AND ANR.

. Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Himanshu Jain, Advocate.

For the Respondents:

Mr. Harpreet Singh, Standing Counsel with Ms. Suhani
Mathur, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J (ORAL)

1. Petitioner impugns order dated 02.08.2023 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 15.01.2022. Petitioner also impugns Show Cause Notice dated 20.07.2023.

2. Vide impugned Show Cause Notice dated 20.07.2023, petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-



“Others”

3. Petitioner was a proprietor of RAMP WELDSAFE & METAL INDUSTRIES and possessed GST registration.
4. Show cause notice dated 20.07.2023 was issued to the petitioner seeking cancellation of GST registration. The notice does not specify any cogent reason, and merely states *“others”*. The show cause notice requires the petitioner to appear before the undersigned i.e., authority issuing the notice. Notice does not give the name of the officer or place or time where the petitioner has to appear.
5. Further the order dated 02.08.2023 passed on the show cause notice dated 20.07.2023 does not give any reasons for cancellation of the registration. It merely states *“reference to show cause notice issued dated 20.07.2023”* and subsequently states *“effective date of cancellation of your registration is 15.01.2022”*.
6. Neither the show cause notice nor the order spell out the reasons for cancellation. In fact, in our view, order dated 02.08.2023 does not qualify as an order of cancellation of registration.
7. Further, Show Cause Notice dated 20.07.2023 was issued to the Petitioner seeking to cancel its registration. However, the Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, the petitioner had



no opportunity to even object to the retrospective cancellation of the registration.

8. The Learned counsel for the Petitioner submitted that the Petitioner was doing business till July 2023, however, due to the certain personal difficulties the Petitioner was unable to continue business. However, the petitioner wishes to restart the business.

9. He further submitted that due to cancellation of registration by the Respondents the Petitioner was unable to file his timely returns.

10. He further submitted that the Petitioner filed an application for revocation of cancellation of GST registration on 31.10.2023. Pursuant to the said application show cause notice dated 07.11.2023 was issued to the Petitioner whereby it was stated “reason for revocation of cancellation - Others (Please specify) - During physical verification, the party was found non-existent at its principal place of business. Thus, the registration may not be revoked.” The show cause notice directed the petitioner to furnish a reply within seven working days and again required the petitioner to appear before the undersigned i.e. authority issuing the notice. However, the said notice again did not given the name of the officer or place or time where the petitioner had to appear.



11. He further submitted that due to lack of information to whom representation is required to be made, Petitioner was unable to make a representation and the application for revocation of cancellation of registration was rejected vide order dated 20.12.2023.

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 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.

14. 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.

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 20.07.2023, order of cancellation dated 02.08.2023 are accordingly set aside. GST registration of the petitioner is restored. Petitioner shall comply with Rule 23 of the Central Goods and Service Tax Rules, 2017.

17. It is clarified that respondents are at liberty to take further action in accordance with law and are not precluded from taking any steps for recovery of any tax, penalty or interest that may be due from the petitioner.

18. Petition is disposed of in above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 19, 2024/NA