$~1

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 27.02.2024

\+ W.P.(C) 2464/2024 & CM APPL. 10133/2024

M/S NORTHERN HOSIERY FACTORY THROUGH ITS PROPRIETOR MR. SUNIL KUMAR BANSAL ..... Petitioner

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX AND ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rakesh Kumar and Mr. P.K. Gambhir, 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 22.08.2023, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice

dated 11.07.2023.

2. Vide Show Cause Notice dated 04.09.2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

"Discrepancies noticed while conduct of Physical Verification"

3. Petitioner was engaged in the business of manufacturing and trading of Synthetic Fiber products and possessed GST registration.

4. Records clearly demonstrate that Petitioner had submitted an application seeking cancellation of registration certificate on 01.04.2022, 30.04.2022, 01.07.2022, 31.07.2022, 01.11.2022, 31.03.2023 and 11.04.2023.

5. Pursuant to the said applications, notices were issued by the respondent on 27.04.2022, 13.06.2022, 05.08.2022, 05.09.2022, 19.11.2022, 27.04.2023, 12.05.2023 seeking additional information and documents relating to application for cancellation of registration.

6. The said applications of the petitioner seeking cancellation were rejected vide orders dated 09.05.2022, 01.07.2022, 18.08.2022, 16.09.2022, 29.11.2022, 10.05.2023 and 24.05.2023 on the ground "*Taxpayer has not submitted any reply, therefore, ARN is rejected*".

7. Thereafter, show cause notice dated 11.07.2023 was issued to the Petitioner seeking to cancel its registration on the ground "*Discrepancies noticed while conduct of Physical Verification*". The said 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 where the petitioner has to appear. Further, the digital signatures in the show cause notice merely mention "*digitally signed by DS GOODS AND SERVICES TAX NETWOK 07.*"

8. Further, the impugned order dated 22.08.2023 passed on the Show Cause Notice dated 11.07.2023 does not give any reasons for cancellation of registration. It merely states "*reference to show cause notice issued dated 11.07.2023*" and subsequently states "*effective date of cancellation of your registration is 01.07.20217*".

9. Further, 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.

10. Learned counsel for the respondent submits that petitioner had applied for cancellation and on a query raised by the Department no response was ever given to the queries raised by the Department.

11. *Per contra,* learned counsel for the petitioner submits that the details were furnished in the application seeking cancellation of registration itself. He further submits that that the business has been discontinued and thus petitioner did not did respond to the show cause notice for cancellation of registration dated 11.07.2023. He further submitted that the petitioner has filed all the requisite returns till July 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 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 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 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. It may be further noted that both the Petitioners and the department want cancellation of the GST registration of the Petitioner, though for a different reason.

16. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 22.08.2023 is modified to the limited extent that registration shall now be treated as cancelled with effect from 11.07.2023 i.e., the date when the Show Cause Notice was issued.

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 in respect of the subject firm in accordance with law including retrospective cancellation of the GST registration.

18. Petition is accordingly disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 27, 2024/rs