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

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Date of decision: 20.02.2024

+ **W.P.(C) 2466/2024 & CM APPL. 10138/2024**

ASHISH GARG L/H OF SH. PAWAN KUMAR, PROPRIETOR OF
M/S. KIRTI PLASTICS Petitioner

versus

GST OFFICER/AVATO,
WARD 63, DELHI & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Puneet Rai, Mr. Sushil Gaba and Mr.
Kapil Sharma, Advocates.
For the Respondents: Mr. Rajeev Aggarwal, ASC.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 14.03.2023 whereby the GST registration of the Petitioner was cancelled retrospectively with effect



from 28.05.2018. Petitioner also impugns Show Cause Notice dated 15.01.2023.

2. Vide Show Cause Notice dated 15.01.2023, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

“Returns furnished by you under Section 39 of the Central Goods and Services Tax Act, 2017”

3. Subject petition has been filed by Sh. Ashish Garg, legal heir of Late Sh. Pawan Kumar, who was the proprietor of M/s Kirti Plastics and was engaged in the business of manufacturing of Plastics. He was registered under the Goods and Service Act, 2017 (hereinafter referred to as ‘the Act’) and claims to have been regularly filing GST returns and making GST payments in accordance with law.

4. A show cause notice dated 15.01.2023 was issued to the petitioner on 15.01.2023. Though the notice not specify any cogent reason, there is an observation in the notice stating failure to furnish returns for a continuous period of six months.

5. Further, the impugned order dated 14.03.2023 passed on the Show Cause Notice dated 15.01.2023 does not give any reasons 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”*. However, the said order in itself is



contradictory. The order states “*reference to your reply dated 15.02.2023 in response to the notice to show cause dated 15.01.2023*” and the reason stated for the cancellation is “*whereas no reply to notice show cause has been submitted*”. The order further states that effective date of cancellation of registration is 28.05.2018 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 14.03.2023 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 the Petitioner submitted that Sh. Pawan Kumar was doing his business till first half of the year 2021 and expired on 15.08.2021.

8. Show Cause Notice was issued on 15.01.2023 wherein the registration was suspended w.e.f from 15.01.2023. Thereafter, Respondent no. 1 passed the order dated 14.03.2023 retrospectively cancelling the GST registration of the taxpayer. No demand had been raised by the said order however the Registration was cancelled retrospectively w.e.f from 28.05.2018.

9. As per the petitioner he could not respond to the show cause



notice as the notice was uploaded on the common portal and not physically served to the Petitioner.

10. As per the Petitioner he does not intend to carry on business and the business has been discontinued immediately on the demise of Sh. Pawan Kumar. Petitioner is aggrieved by the retrospective cancellation of the registration as a sum of Rs. 27,529/- and Rs. 27,771/- is standing to the credit of the predecessor of the petitioner in the electronic cash register towards SGST and CGST respectively and petitioner is unable to recover and claim the same.

11. 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.

12. 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 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.

13. We may also note that the Show Cause Notice did not put the noticee to notice that registration was liable to be cancelled retrospectively.

14. 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.

15. In view of the above facts that Petitioner does not seek to carry on business or continue with the registration, the impugned order dated 14.03.2023 is modified to the limited extent that registration shall now be treated as cancelled with effect from 15.08.2021 i.e., the date when Sh. Pawan Kumar passed away. Petitioner shall furnish the details as required by Section 29 of the Act.

16. It is clarified that it would be open to the petitioner to make an appropriate application to the concerned authorities to claim the said amounts and concerned authorities shall consider the same in



accordance with law.

17. 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.

18. The issue with regard to succession is left open to be considered by the competent authority at an appropriate stage.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 20, 2024/vp

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