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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 23.02.2024

\+ **W.P.(C) 2761/2024 & CM APPL. 11241/2024**

PUSPENDAR ..... Petitioner

versus

SUPERINTENDENT RANGE-152, CENTRAL GOODS AND SERVICES TAX & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner Mr. Nitin Gulati and Mr. Anurag Rajput, Advocates.

For the Respondents: Mr. Harpreet Singh, Sr. Standing Counsel.

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 28.02.2023 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 08.10.2021. Petitioner also impugns Show Cause Notice dated 06.01.2023.

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

disposal today.

3. Vide impugned Show Cause Notice dated 06.01.2023 petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-

> *"In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts."*

4. Show cause notice dated 06.01.2023 was issued to the petitioner seeking cancellation of GST registration. The notice does not specify any cogent reason, and merely states *"In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts"*. The show cause notice requires the petitioner to appear before the undersigned i.e., authority issuing the notice. However, the notice does not give the name of the officer or place where the petitioner has to appear.

5. Further the order dated 28.02.2023 passed on the show cause notice dated 06.01.2023 does not give any reasons for cancellation of the registration. It merely states "*Neither the tax payer nor any authorised person on behalf of the tax payer appeared for personal Hearing. Accordingly, GST registration is being cancelled in terms of Sub-section (2) of Section 29 of the CGST Act, 201 7. The tax payer is directed to pay arrears of any tax, interest or penalty as applicable in your case and also submit all pending GST return including annual*

return as applicable and final return. You must preserve all records for audit or any other enquiry at the address given for future correspondence. The cancellation of registration shall not affect the liability of the person to pay tax and other dues for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation." The order further states that effective date of cancellation of registration is 08.10.2021 i.e., a retrospective date.

6. In fact, in our view, order dated 28.02.2023 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. 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, 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 filed an application for revocation of cancellation of GST registration on 24.03.2023. Pursuant to the said application, show

cause notice dated 19.04.2023 was issued to the Petitioner, whereby it was stated "*reason for revocation of cancellation -Reason for revocation of cancellation- The reason entered for revocation of cancellation is not appropriate*" 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 where the petitioner had to appear.

9. Petitioner submitted a reply by uploading it on the portal, however, the authorities without considering the reply submitted by the Petitioner issued order dated 24.05.2023 for rejection of Application for revocation which merely stated "*As per report of RO in E office File No. GEXCOM/Tech/GST/3800/2022-CGtShTe, taxpayer has obtained GSTIN on forged documents and also found non existent on physical verification, hence, revocation request is rejected.*"

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

11. 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.

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 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.

13. 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.

14. In view of the above the order dated 28.02.2023 cancelling the of GST registration of the Petitioner is set aside. The matter is relegated to the proper officer to re-adjudicate the Show Cause Notice dated 06.01.2023 in accordance with law.

15. Proper officer shall furnish to the petitioner the material in support of the Show Cause Notice within one week. Petitioner shall file a response thereto within one week. Thereafter the proper officer shall adjudicate the Show Cause Notice within a maximum period of two weeks after giving an opportunity of personal hearing to the petitioner.

16. The petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 23, 2024/ss