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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 14.03.2024

\+ W.P.(C) 2971/2024

M/S SUPREME ENTERPRISES ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF GOODS AND SERVICE TAX NORTH DELHI ..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Pranay Jain and Mr. Karan Singh, Advocates.

For the Respondents: Mr. Harpreet Singh, Senior Standing Counsel with Ms. Suhani Mathur & Mr. Jatin Kumar Gaur, Advocates.

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 07.07.2023, whereby the GST registration of the petitioner has been cancelled retrospectively with effect

from 18.01.2022. Petitioner also impugns Show Cause Notice dated 06.06.2023.

2. Vide Show Cause Notice dated 06.06.2023, 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. Petitioner is engaged in the business of polymers of ethylene and possessed GST registration.

4. Petitioner had submitted an application seeking cancellation of GST registration dated 26.07.2022 on the ground of closure of business.

5. Pursuant to the said application, notice was given to the Petitioner on 16.08.2022 seeking additional information and documents relating to application for cancellation of registration. On account of unsatisfactory reply, order dated 29.08.2022 was passed rejecting the application for cancellation.

6. Thereafter, Petitioner again submitted an application seeking cancellation of GST registration dated 24.11.2022. Pursuant to the said application, notice was issued to the Petitioner on 13.12.2022 seeking additional information and documents relating to application for cancellation of registration. Once again on account of unsatisfactory reply,

order dated 18.01.2023 was passed rejecting the application for cancellation.

7. Further, Petitioner again submitted an application seeking cancellation of GST registration dated 30.01.2023. Pursuant to the said application, notice was again issued to the Petitioner on 31.01.2023 seeking additional information and documents relating to application for cancellation of registration. On account of unsatisfactory reply, order dated 13.02.2023 was passed rejecting the application for cancellation.

8. Thereafter, Show Cause Notice dated 06.03.2023 was issued to the petitioner. Though the notice does not specify any cogent reason, it merely states *"Issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax."*. Said Show Cause Notice required the petitioner to appear on 16.03.2023 at 11:30 AM before the undersigned i.e. authority issuing the notice. However, the said 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 mentions "digitally signed by DS GOODS AND SERVICES TAX NETWORK 07."

9. Further, the said Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled

retrospectively. Thus, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

10. Thereafter, impugned order dated 20.03.2023, passed on the Show Cause Notice dated 06.03.2023, does not give any reasons for cancellation. It, however, states that the registration is liable to be cancelled for the following reason "*1. You have neither appeared for the PH fixed nor submitted/uploaded any clarifications/reply for wrong availment and utilization of ITC credit. Your GST Registration is being Cancelled retrospectively to safeguard the Govt. Revenue as per CGST Act, 2017. If, you want to continue your Business, please discharge all pending GST Liability along with applicable interest and file an application for revocation of cancellation of GST Registration within a period of 30 days from the date of Cancellation on the common portal otherwise please discharge all pending GST liability along with applicable interest and file GSTR-10 within a period of 3 months from date of cancellation of Registration on the common portal. It is pertinent to 'mention here that the cancellation of GST registration does not affect the liability of the person to pay tax and other dues for any period prior/on or after the date of cancellation of GST Registration in term of Section 29(3) of the CGST Act, 2017.*" The order further states that effective date of cancellation of registration is 18.01.2022 i.e., a retrospective date.

11. In fact, in our view, order dated 20.03.2023 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.

12. Pursuant to the said impugned order, Petitioner filed an application dated 05.04.2023 seeking revocation of cancellation of registration. Thereafter, vide order dated 01.05.2023 the application for revocation of GST cancellation was allowed and the registration of was restored.

13. Thereafter, again Show Cause Notice dated 06.06.2023 was issued to the Petitioner seeking to cancel its registration on the ground "*returns furnished by you under section 39 of the Central Goods and Services Tax Act,2017*". Said Show Cause Notice required the petitioner to appear on 04.07.2023 at 11:00 before the undersigned i.e. authority issuing the notice. However, the said 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 mentions Jurisdiction Office and "*digitally signed by DS GOODS AND SERVICES TAX NETWORK 07*."

14. Though the notice does not specify any cogent reason, there is an observation in the notice stating "failure to furnish returns for a

continuous period of six months". Further, the said 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.

15. Thereafter, the impugned order dated 07.07.2023 passed on the said Show Cause Notice also does not give reasons of cancellation. It merely states *"reference to show cause notice issued dated 06.06.2023"* and subsequently states *"effective date of cancellation of your registration is 18.01.2022"*.

16. Learned counsel for the Petitioner submits that the Petitioner is no longer continuing business and the business activities of the Petitioner have closed down w.e.f 26.07.2022.

17. We notice that the Show Cause Notice and the impugned order are also bereft of any details accordingly the same cannot be sustained and neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation.

18. 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.

19. 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 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.

20. It may be further noted that both the Petitioner and the department want cancellation of the GST registration of the Petitioner, though for different reasons.

21. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 07.07.2023 is modified to the limited extent that registration shall now be treated as cancelled with effect from 26.07.2022 i.e., the date when the Petitioner closed down his business activities. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services

Tax Act, 2017.

22. 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 14, 2024
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