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

% Date of decision: 28.02.2024

\+ **W.P.(C) 2974/2024 & CM APPL. 12207/2024 (Exemption)**

M/S NIRMAL METAL TRADING COMPANY (THROUGH ITS PROPRIETOR SH. NIRMAL KUMAR) ...... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Jitin Singhal & Mr. Pravesh Bahuguna, 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 22.02.2024, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 28.07.2022. Petitioner also impugns Show Cause Notice dated 19.05.2023.

2. Vide Show Cause Notice dated 19.05.2023, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

"Section 29(2)(e)- registration obtained by means of fraud, wilful misstatement or suppression of facts"

3. Petitioner is a proprietorship firm engaged in trading of metal/scrap and possessed GST registration.

4. Show Cause Notice dated 19.05.2023 was issued to the Petitioner seeking to cancel its registration on the ground "*Section 29(2)(e)- registration obtained by means of fraud, wilful misstatement or suppression of facts*". Said Show Cause Notice required 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.*"

5. 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.

6. Thereafter, the impugned order dated 22.02.2024 passed on the Show Cause Notice dated 19.05.2023 does not give any reasons for cancellation of registration. It merely states, "*reference to show cause notice issued dated 19.05.2023*" and subsequently states "*effective date of cancellation of your registration is 28.07.2022*".

7. Learned counsel for the petitioner submits that petitioner is no longer interested in continuing the business and has closed down his business activities.

8. 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.

9. 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.

10. 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.

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

12. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 22.02.2024 is modified to the limited extent that registration shall now be treated as cancelled with effect from 19.05.2023 i.e., the date when the Show Cause Notice was issued. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.

13. 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 28, 2024
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