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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 28.02.2024

\+ **W.P.(C) 2985/2024, CM APPL. 12246/2024 & CM APPL. 12247/2024**

M/S. ANJU INDUSTRY ..... Petitioner

versus

SPECIAL COMMISSIONER-1 , DEPARTMENT OF TRADE AND TAXES ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Dinesh Kothari and Mr. B.S. Randhawa, Advocates.
For the Respondents: Mr. Rajeev Aggarwal, Additional Standing Counsel.

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order in appeal dated 13.02.2024, whereby the appeal filed by the petitioner has been dismissed solely on the ground of limitation. Petitioner had filed the appeal impugning order dated 18.08.2022 ,whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 01.07.2017.Petitioner also impugns Show Cause Notice dated 03.02.2022

2. Vide Show Cause Notice dated 03.02.2022, petitioner was called upon to show 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 was engaged in the business of manufacturing and trading of Machine Screws and LED Lights and possessed GST registration.

4. Show Cause Notice dated 03.02.2022 was issued to the petitioner. . 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". The 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 signature in the show cause notice merely mention "*digitally signed by DS GOODS AND SERVICES TAX NETWORK 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. Further, the impugned order dated 18.08.2022 passed on the

Show Cause Notice dated 03.02.2023 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 05.03.2022 in response to the notice to show cause dated 02.02.2022*" 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 01.07.2017 i.e., a retrospective date.

7. In fact, in our view, order dated 18.08.2022 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.

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

9. 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.

10. 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.

11. 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.

12. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated

13.02.2024 is modified to the limited extent that registration shall now be treated as cancelled with effect from 03.02.2022 i.e., the date when the Show Cause Notice was issued. Petitioner shall comply with the requirements of 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/ss