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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 04.03.2024

\+ **W.P.(C) 3182/2024 & CM. APPLS. 13113-14/2024**

AMAR ENTERPRISES THROUGH ITS PROPRIETOR... Petitioner

versus

COMMISSIONER OF DELHI GOODS AND SERVICES TAX AND ANR ..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Rakesh Kumar and Mr. P.K. Gambhir, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats, Advocate.

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

JUDGMENT

SANJEEV SACHDEVA, J (ORAL)

1. Petitioner impugns order dated 08.08.2023, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 03.07.2017. Petitioner also impugns Show Cause Notice dated 29.10.2021.

2. Vide Show Cause Notice dated 29.10.2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

> *"Any taxpayer other than composition taxpayer has not filed returns for a continuous period of six months"*

3. Petitioner is a proprietorship firm engaged in retail and wholesale of paper, corrugated paper and paperboard and possessed GST registration.

4. Show Cause Notice dated 29.10.2021 was issued to the Petitioner seeking to cancel its registration on the ground "*any taxpayer other than composition taxpayer has not filed returns for a continuous period of six months*". The said Show Cause Notice 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.

5. Thereafter, the impugned order dated 08.08.2023 passed on the Show Cause Notice dated 29.10.2021 does not give any reasons for cancellation of registration. It merely states, "*Whereas no reply to the show cause notice has been submitted and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): Section 29(2)(c)- Person, other than paying tax u/s 10 failed to furnish returns for prescribed periods*".

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

7. Further, he submits that the registration of the petitioner was cancelled by Impugned Order dated 11.08.2021 with effect from 30.06.2020. Pursuant to the said impugned order, an application seeking revocation of cancellation dated 01.09.2021 was filed by the petitioner whereby the registration was restored. Thereafter, subject Show Cause Notice dated 29.10.2021 was issued and by the impugned order dated 08.08.2023, it was once again cancelled retrospectively with effect from 03.07.2017 on the ground of "Section 29(2)(c)- Person, other than paying tax u/s 10 failed to furnish returns for prescribed period*s*".

8. We notice that the impugned Show Cause Notice and the impugned order are also bereft of any details and accordingly the same cannot be sustained. Neither the impugned Show Cause Notice, nor the impugned 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 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 taxpayer 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 different reasons.

12. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 08.08.2023 is modified to the limited extent that registration shall now be treated as cancelled with effect from 29.10.2021 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

MARCH 04, 2024/NA