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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 06.03.2024

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W.P.(C) 3381/2024

BIJENDER THAKUR

... Petitioner

versus

COMMISSIONER OF GST & ORS.

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Prince Mohan Sinha, Mr. Dinesh Mohan Sinha, Mr. Maneesh Jain and Mr. Rajeev Deora, Advocates.

For the Respondents:

Mr. Rajeev Aggarwal, ASC (Through VC) 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 13.02.2021, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 15.07.2017. Petitioner also impugns Show Cause Notice dated 03.02.2021.

2. Vide Show Cause Notice dated 03.02.2021, petitioner was called upon to show cause as to why the registration be not cancelled on the ground that “Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months .”



3. Thereafter, the impugned order dated 13.02.2021 passed on the Show Cause Notice does not give reasons of cancellation. It, however, states that the registration is liable to be cancelled for the following reason “*whereas no reply notice to show cause has been submitted*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 12/02.2021 in response to the notice to show cause dated 03/02/2021*” and the reason stated for cancellation is “*Whereas no reply to notice to show cause has been submitted*”. The order further states that effective date of cancellation of registration is 15.07.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

4. Further, 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.

5. Pursuant to the said impugned order, Petitioner filed an application dated 04.06.2021 seeking revocation of cancellation of registration. Said application was rejected vide order dated 23.05.2023, whereby it was merely stated “*You have not replied to the notice issued dated 18.08.2022 within the time specified therein.*”

6. Learned counsel for petitioner submits that petitioner is no longer interested in continuing the business and has closed down his business activities due to ill health.



7. 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.

8. 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.

9. 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 is 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.

10. 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.

11. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 13.02.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 03.02.2021 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.

12. 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.

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

SANJEEV SACHDEVA, J

MARCH 06, 2024/NA

RAVINDER DUDEJA, J