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

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Date of decision: 07.03.2024

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W.P.(C) 3529/2024 & CM APPL. 14339/2024

GANESH SALES CORPORATION (PROPRIETOR SHRI BHUPESH GARG)
..... 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. N.K. Aggarwal, Advocate for R-1.
Mr. Arnav Kumar, SSC with Ms. Aranya Sahay,
Advocates for R-2 and 3.

CORAM:-**HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order dated 29.02.2024 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 05.05.2018. Petitioner also impugns Show Cause Notice dated 05.01.2024.

2. Vide Show Cause Notice dated 05.01.2024, 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 engaged in the business of the trading of ferrous and non-ferrous metals and possessed GST registration.

4. Show Cause Notice dated 05.01.2024 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 on 11.01.2024 at 2:05 PM 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.”*

5. 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.

6. Thereafter, the impugned order dated 29.02.2024 passed on the said Show Cause Notice also does not give reasons of cancellation. It merely states *“reference to show cause notice issued dated 05.01.2024”* and subsequently states *“effective date of cancellation of your registration is 05.05.2018”*.



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

8. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, 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. The 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 in this regard is correct, it would follow that the proper officer is also 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. In view of the aforesaid, order dated 29.02.2024 cannot be sustained and is accordingly set aside. The GST registration of the petitioner is restored. The petitioner shall, however, make all necessary compliances and file the requisite returns and information inter alia in terms of Rule 23 of the Central Goods and Services Tax Rules, 2017.

11. 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.

12. The petition is accordingly disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 07, 2024

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