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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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Date of decision: 03.04.2024

\+ W.P.(C) 3858/2024 & CM APPL. 15900/2024 (Exemption)

M S ABHAY TRADERS .... Petitioner

versus

COMMISSIONER OF DELHI GOODS AND SERVICES TAX AND ANOTHER. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Vinod Sabharwal, Mr. Sailender Verma & Mr. Aditya Rai, 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 03.02.2023 whereby the GST registration of the Petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 24.09.2021.

2. Vide Show Cause Notice dated 24.09.2021, petitioner was called upon to show cause as to why the registration be not cancelled

for the following reason:-

"Dealer has not filled returns for more than 3 months"

3. Subject petition has been filed by Sh. Abhay Munjal, legal heir of Late Sh. Manoj Kumar Munjal, who was the proprietor of M/s Abhay Traders and was registered under the Goods and Service Act, 2017 (hereinafter referred to as 'the Act').

4. Show Cause Notice dated 24.09.2021 was issued to the petitioner. Though the notice does not specify any cogent reason, it merely states "*Dealer has not filed return for more than 3 months*". 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.

5. Thereafter, the impugned order dated 03.02.2023 passed on the Show Cause Notice dated 24.09.2021 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 notice to show cause has been submitted*". However, the said order in itself is contradictory. The order states "*reference to your reply dated 07/01/2022 in response to the notice to show cause dated 24/09/2021*" and the reason stated for the 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 01.07.2017 i.e., a retrospective date.

6. Neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation. On the one hand, the order states that no reply filed and on the other hand refers to a reply dated 07.01.2022, which shows complete non-application of mind, particularly when the Proprietor had passed away and no reply was filed.

7. Learned counsel for Petitioner submits that Sh. Manoj Kumar Munjal passed away on 29.04.2021 and after the demise of the proprietor, no business has been carried out.

8. He further submits that Mr. Abhay Munjal i.e., the son of late proprietor is carrying on business under a separate name and separate GST registration number and the subject GST registration has not been used by the said legal heirs to conduct any business in the name and style of the proprietorship concern of Late Sh. Manoj Kumar Munjal.

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 different reasons.

12. In view of the above facts that Petitioner does not seek to carry on business or continue with the registration, the impugned order dated 03.02.2023 is modified to the limited extent that registration shall now be treated as cancelled with effect from 29.04.2021 i.e., the date when Sh. Manoj Kumar Munjal passed away. 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

APRIL 03, 2024/*SK*