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

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Date of decision: 19.03.2024

W.P. (C) 3930/2024 & CM APPLs. 16201-02/2024

R8 SPACE DESIGN PVT LTD.

..... Petitioner

versus

THE PRINCIPAL COMMISSIONER STATE TAX DELHI
& ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Anurag Soan, Mr. Siddhant Gupta and Mr. Saransh Gupta, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar, Ms. Samridhi Vats, Advocates.

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

1. Petitioner impugns order dated 01.12.2020, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 19.11.2020.

2. Vide Show Cause Notice dated 19.11.2020, 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 was engaged in business of design services for home and services and possessed GST registration.

4. The Show Cause Notice was issued to the petitioner on 19.11.2020. Though the notice does not specify any cogent reason, it merely states *“any taxpayer other than composition taxpayer has filed returns for a continuous period of six months”*. 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.

5. Further, the impugned order dated 01.12.2020 passed on the Show Cause Notice does not give any reasons for cancellation. It 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 28/11/2020 in response to the notice to show cause dated 19/11/2020”* 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 01.07.2017 i.e., a retrospective date. There is no



material on record to show as to why the registration is sought to be cancelled retrospectively.

6. In fact, in our view, order dated 01.12.2020 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.

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

8. We notice that the Show Cause Notice and the impugned order are 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.

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 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.

11. It is clear that both the petitioner and the respondent want the GST registration to be cancelled, 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 01.12.2020 is modified to the limited extent that registration shall now be treated as cancelled with effect from 19.11.2020 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 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 19, 2024/vp