



\$~48

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

Date of decision: 21.03.2024

W.P.(C) 4010/2024

ANIL SONI PROP. OF M/S. SONI SALES CORP Petitioner

versus

SUPERINTENDENT, WARD-49, CGST DELHI &
ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Puneet Rai, Mr. Sushil Gaba, Ms. Srishti Sharma & Mr. Kapil Sharma, Advocates.

For the Respondents: Mr. Anurag Ojha, SSC with Mr. Subham Kumar, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 08.06.2022, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 02.07.2017.
2. Petitioner was engaged in the business of trading of rubber and rubber chemicals and possessed GST registration.
3. Show Cause Notice dated 26.05.2022 was issued to the Petitioner seeking to cancel its registration. Though the notice does not specify any cogent reason, it merely states “Others”.



4. Thereafter, the impugned order dated 08.06.2022 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 “*Cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.*”. The order further states that effective date of cancellation of registration is 02.07.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

5. In our view, impugned order dated 08.06.2022 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.

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

7. 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.

8. 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.

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 the Petitioner does not seek to carry on business or continue the registration, the impugned order dated 08.06.2022 is modified to the limited extent that that registration shall now be treated as cancelled with effect from 08.06.2022 i.e., the date of the order for cancellation of registration. Petitioner shall make all 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 21, 2024/sk