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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 18.03.2024

\+ W.P.(C) 4096/2024

M/S M. P. INDUSTRIES ..... Petitioner

versus

COMMISSIONER OF STATE GOODS AND SERVICES TAX, DELHI AND ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Shailender Verma, Mr. Siddharth Verma and Mr. Subhash Chandra, Advocates.

For the Respondents: Mr. Rajiv Aggarwal, ASC

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 18.02.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect

from 26.07.2018. Petitioner also impugns Show Cause Notice dated 04.01.2022

2. Show Cause Notice dated 04.01.2022 was issued to the Petitioner seeking to cancel its registration for the following reason: -

> "*Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months*".

3. Petitioner is engaged in the business of the trading of packing of goods, of plastic; stoppers, lids, caps and other closures, of plastics, other articles of plastics and articles of other materials and possessed the GST registration of the same.

4. Petitioner had submitted an application seeking cancellation of GST registration dated 24.11.2020 on the ground of closure of business.

5. Pursuant to the said application, notice was given to the Petitioner on 13.04.2021 seeking additional information and documents relating to application for cancellation of registration. On account of unsatisfactory reply, order dated 07.06.2021 was passed rejecting the application for cancellation

6. Thereafter, Show Cause Notice dated 04.01.2022 was issued to the Petitioner seeking to cancel its registration. Though the notice does not specify any cogent reason it merely states "*Any Taxpayer*

other than composition taxpayer has not 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. Thus, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

7. Thereafter, the impugned order dated 18.02.2022 passed on the said Show Cause Notice also does not give reasons of cancellation. It merely states that the registration is liable to be cancelled for the following reason "*whereas no reply to the show cause notice has been submitted".* However, the said order in itself is contradictory. The order states "*reference to your reply dated 13/01/2022 in response to the notice to show cause dated 04/01/2022*" and the reason stated for the cancellation is "*whereas no reply to notice show cause has been submitted* ". The order further states that effective date of cancellation of registration is 26.07.2018 i.e., a retrospective date.

8. Learned counsel for the petitioner submits that petitioner had applied for cancellation of his registration on 24.11.2020, however, the same was rejected by order dated 07.06.2021 without assigning any reason. It is pointed out that order dated 07.06.2021 records that the reply has been examined and same has not been found to be satisfactory for the following reasons. Thereafter the entire document

is blank and states that application is rejected in accordance with the provision of the Act.

9. Learned counsel submits that since the petitioner had applied for cancellation, petitioner did not file the returns and however a notice seeking cancellation of registration was issued on 04.01.2022 on the ground that petitioner had "not filed returns for continuous period of six months" and pursuant thereto the impugned order of cancellation has been passed with retrospective effect effective from 26.07.2018.

10. Learned counsel submits that though petitioner had initially decided to close down his business. However, now he wants to continue the business and as such does not seek the cancellation of the GST registration and seeks its revival.

11. He submits that petitioner is willing to make all necessary compliances under Rule 23 of the Central Goods and Service Tax Rules, 2017 and furnish all returns with delayed fine and penalties. He submits that petitioner has not carried out any business from the date he sought cancellation till date. However, without prejudice will file all necessary returns with fine and penalties.

12. 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.

13. 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.

14. It is important to note that, according to the respondent, one of the consequences for cancelling a taxpayer'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.

15. In view of the aforesaid, order dated 18.02.2022 and Show Cause Notice dated 04.01.2022 cannot be sustained and are 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.

16. 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 18, 2024/'*rs*'