2024:DHC:2574-DB

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

% Date of decision: 20.03.2024

\+ W.P.(C) 4251/2024

KIRAN DEVI GOEL (PROP. M/S SHREE KRISHNA ENTERPRISES ..... Petitioner

versus

SUPERINTENDENT RANGE-23, CENTRAL GOODS AND SERVICES TAX & ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Nitin Gulati for Ms. Reena Gandhi & Mr. Sachin Goyal, Advocates.

For the Respondents: Mr. Harpreet Singh, SSC with Ms. Suhani Mathur & Mr. Jatin Kumar Gaur, Advocates.

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 17.07.2023 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 07.07.2017. Petitioner also impugns Show Cause Notice dated 27.06.2023.

2. By Show Cause Notice dated 27.06.2023, 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. Said Show Cause Notice was issued to the petitioner on 27.06.2023. Though the notice does not specify any cogent reason, it merely states *"Section 29(2)(e)-registration obtained by means of fraud, wilful misstatement or suppression of facts"*. Show Cause Notice required the petitioner to appear on 04.07.2023 at 1:20 PM before the undersigned i.e. authority issuing the notice. However, the said Notice does not give the name or designation of the officer or place where the petitioner has to appear.

4. Thereafter, the impugned order dated 17.07.2023 passed on the Show Cause Notice does not give any reasons for cancellation. It merely states "*reference to show cause notice issued dated 27/06.2023"* and subsequently states "*the effective date of cancellation of your registration is 07/07/2017"*. The order further states that effective date of cancellation of registration is 07.07.2017 i.e., a retrospective date.

5. Learned counsel for Petitioner submits that the Petitioner had filed an application for condonation of delay of revocation of cancellation of registration dated 21.08.2023 on the ground that processing of documents got delayed due to a family member's medical condition.

6. He further submits that the Petitioner was served with a Show Cause Notice dated 14.02.2024 on the application dated 21.08.2023, however, Petitioner being a senior citizen could not reply to the said notice as she received the notice late. Thereafter, vide order dated 07.03.2024, the said application was rejected on the ground "*No response received from the taxpayer, nor the taxpayer appeared for*

personal hearing, hence request for condonation of delay is being rejected".

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. 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.

9. 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.

10. 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 taxpayer 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.

11. In view of the aforesaid, the order dated 17.07.2023 cannot be sustained and is accordingly set aside. The GST registration of the petitioner is restored. 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.

12. 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 20, 2024/RM