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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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Date of decision: 21.03.2024

+ W.P. (C) 4274/2024 & CM APPL. 17511/2024

M/S DP ABHUSHAN

..... Petitioner

versus

COMMISSIONER, CGST & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rishabh Sancheti, Ms. Padma Priya & Ms. Shreya Bhatnagar, Advocates.

For the Respondents: Mr. Arnav Kumar & Mr. Gurdas Khurana, Advocates for CGST.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 11.10.2023 whereby the appeal of the Petitioner seeking restoration of the GST registration has been dismissed. Petitioner also impugns order dated 13.10.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 28.07.2020 and also impugns Show Cause Notice dated 29.09.2022.

2. Petitioner was engaged in the business of jewelry related products and also carries out export of such products and possessed GST registration.



3. Show Cause Notice dated 29.09.2022 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, impugned order dated 13.10.2022 passed on the Show Cause Notice does not give any reasons for cancellation. It merely states that the registration is liable to be cancelled for the following reason “*Neither attended PH nor responded to the SCN issued. Hence, cancelled*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 08/10/2022 in response to the notice to show cause dated 29/09/2022*” and the reason stated for the cancellation is “*Neither attended PH nor responded to the SCN issued. Hence, cancelled*”. The order further states that effective date of cancellation of registration is 28.07.2020 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 13.10.2022 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. Pursuant thereto, the petitioner filed an appeal which was dismissed by impugned order dated 11.10.2023. We note that an inspection was carried out and the fact of petitioner not having been found at the subject premises was pointed out for the first time only in



the impugned order dated 11.10.2023. We further note that neither the Show Cause Notice nor the order dated 13.10.2022 cancelling the GST registration of petitioner cited any such reason and the said reason has surfaced only in the appeal. The mere fact that the subject ground has been mentioned in the appeal for the first time would be of no consequence.

7. We notice that the Show Cause Notice and the impugned orders are bereft of any details and accordingly the same cannot be sustained. Neither the Show Cause Notice, nor the orders 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. In view of the aforesaid, Show Cause Notice dated 29.09.2022 and impugned orders dated 13.10.2022 and 11.10.2023 cannot be sustained and are 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 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. Petition along with application stands disposed of.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 21, 2024/sk