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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 22.03.2024

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W.P.(C) 4383/2024

M/S CHEHAK FASHIONS THROUGH ITS PROPRIETOR SH.
MANISH GOLCHHA Petitioner

Versus

COMMISSIONER, DELHI GST AND ANR. ... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Vineet Bhatia, Mr. Ashok Sharma and Mr. Vishal Sharma, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, Additional Standing Counsel with Ms. Samridh 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 01.01.2023 whereby the appeal of the Petitioner has been dismissed solely on the ground that the same is barred by limitation. Petitioner also impugns order dated 26.10.2021 whereby the GST registration of the petitioner was



cancelled retrospectively with effect from 26.07.2017 and also impugns Show Cause Notice dated 20.09.2021.

2. Vide Show Cause Notice dated 20.09.2021, 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 the business of trading of woven fabric and possessed GST registration.

4. The Show Cause Notice was issued to the petitioner on 20.09.2021. 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 fails to mention the date and time for the Petitioner to appear for the personal hearing. Further, it 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 26.10.2021 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 29/09/2021 in response to the notice to show cause dated 20/09/2021” 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 26.07.2017 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 our view, order dated 26.10.2021 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 has closed business and 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 26.10.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 20.09.2021 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 22, 2024
NA