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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 22.03.2024

+ **W.P.(C) 4394/2024 & CM. APPL. 17980/2024**

K.C.P INDIA

..... Petitioner

Versus

THE COMMISSIONER, DEPARTMENT OF TRADE AND TAXES
& ANR. ... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. John Matthew, Advocate.

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 01.01.2021 whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 01.09.2020.



2. Vide Show Cause Notice dated 01.09.2020, 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 is engaged in the business of manufacturing of PVC and possessed GST Registration.

4. Petitioner had submitted an application seeking cancellation of GST registration dated 06.05.2019 on the ground of closure of business.

5. Pursuant to the said application, Show Cause Notice dated 16.03.2020 was issued to the Petitioner seeking additional information and documents relating to application for cancellation of registration.

6. Thereafter, vide order for cancellation of provisional registration dated 05.06.2020 was passed. It merely states *“that your provisional registration is liable to be cancelled for the following reasons(s).”* However, there is no reason stated thereafter.

7. Later, a Show Cause Notice was issued to the petitioner on 01.09.2020 seeking to cancel the registration. 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 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.

8. Further, the impugned order dated 01.01.2021 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 the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for the following reason Non filing of GST Registration”*. The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

9. In fact, in our view, order dated 01.01.2021 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.

10. Learned Counsel for petitioner submits that he had applied for cancellation of registration with effect from 06.05.2019, However, no order on the said application was communicated to the petitioner.



Subsequently, the impugned Show Cause Notice dated 01.09.2020 was issued on the ground of non-filing of returns for period of six months. Petitioner thereafter responded that he had closed his business activity and by the impugned order, the registration has been cancelled retrospectively on the ground of non-filing of GST registration.

11. Further, learned counsel for the Respondent submits that the reason mentioned in the order of cancellation appears to be erroneous, it should have been “*non-filing of GST returns*” instead of “*non-filing of GST registration*”.

12. 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.

13. 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.

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 taxpayer 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.

15. It is clear that both the petitioner and the respondent want the GST registration to be cancelled, though for different reasons.

16. In view of the above that that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 01.01.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 06.05.2019 i.e., the date when the petitioner filed an application seeking cancellation of GST registration. Petitioner shall make the necessary compliances as



required by Section 29 of the Central Goods and Services Tax Act, 2017.

17. 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.

18. Petition is accordingly disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 22, 2024
NA