



\$~29

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

%

Date of decision: 04.04.2024

+ W.P.(C) 4398/2024

ARCHIT KHANDELWAL PROPRIETOR M/S ARCHIT
ENTERPRISES Petitioner

Versus

PR. COMMISSIONER OF DGST DELHI. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rishabh Jain & Mr. Ramashish,
Advocates.

For the Respondents: Mr. Rajeev 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 16.06.2021 whereby the GST registration of the Petitioner was cancelled retrospectively with effect from 25.05.2018. Petitioner also impugns Show Cause Notice dated 06.04.2021.

2. Petitioner is engaged in the business of trading in metals and possessed GST Registration.

3. Petitioner had submitted an application seeking cancellation of



GST Registration dated 07.01.2020 on the ground of closure of business.

4. Pursuant to the said application, Show Cause Notice dated 24.02.2021 was given to the petitioner seeking additional information and documents relating to application for cancellation of registration. Petitioner had filed a response to the said Notice, however, the said application was rejected.

5. Thereafter, impugned Show Cause Notice dated 06.04.2021 was issued to the Petitioner seeking to cancel its registration. The notice states “*Issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax.*” However, the Show Cause Notice does not bear the date and time whereby the Petitioner was required to appear for personal hearing.

6. 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. Pursuant to the impugned Show Cause Notice, impugned order dated 16.06.2021 was passed. It merely states that the registration is liable to be cancelled for the following reason “*Online reply submitted by the dealer is not relevant, Therefore, registration is liable to be cancelled suo-moto and other proceedings as per law will be*



initiated". The order further states that effective date of cancellation of registration is 25.05.2018 i.e., a retrospective date. Further, it may be noted that in the column at the bottom there are no dues stated to be due against the Petitioner and the table shows nil demand.

8. As per the petitioner, he filed a detailed reply dated 13.04.2021 to the impugned Show Cause Notice dated 06.04.2021, however, the same was not considered by the Proper Officer while passing the impugned order dated 16.06.2021.

9. Pursuant to the said impugned order, Petitioner filed an application dated 24.06.2021 seeking revocation of cancellation of GST registration. On the said application, Petitioner was issued a Show Cause Notice dated 19.07.2021 for rejection of application for revocation of cancellation of registration. It merely stated "*The reasons entered for revocation of cancellation is not appropriate.*"

10. Thereafter, Petitioner filed a detailed reply, however, the same was not considered by the Proper Officer. Vide order dated 18.08.2021, the application for revocation was rejected on the ground that "*reply was not satisfactory*".

11. As per Petitioner, he had filed an appeal against order dated 18.08.2021. The said appeal was dismissed solely on the ground that the Petitioner failed to appear during the proceedings.

12. Learned counsel for Petitioner submits that Petitioner is no longer continuing business and the business activities of the Petitioner



have been closed down.

13. We notice that Show Cause Notice and the impugned order are also 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.

14. 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.

15. 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.

16. It may be further noted that both the Petitioner and the department want cancellation of the GST registration of the Petitioner, though for different reasons.

17. In view of the above that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 16.06.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 31.12.2019. i.e., the date when the Petitioner discontinued his business. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017

18. 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 after giving a proper Show Cause Notice and an opportunity of hearing.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 04, 2024/vp