2024:DHC:3155-DB

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

% Date of decision: 16.04.2024

\+ W.P.(C) 4459/2024 & CM APPL. 18298/2024

AJAY AGARWAL & ANR. ..... Petitioners

versus

DEPUTY COMMISSIONER CENTRAL GOODS AND SERVICES TAX DELHI NORTH DARYAGANJ RANGE - 1 & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Abhishek Garg, Mr. Sandeep Gupta, Mr. Yash Gaiha & Ms. Harneet Pushkarna, Advocates.

For the Respondents: Ms. Neha Malik, Standing Counsel with Mr. Sahil Malik, Advocate

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 10.02.2023 whereby the GST Registration of the petitioner was cancelled retrospectively with effect from 21.05.2018. Petitioner also impugns Shoe Cause Notice dated 01.02.2023.

2. Vide Show Cause Notice dated 01.02.2023, petitioner was called upon to show as to why the registration be not cancelled for the following reasons:-

> *"In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts"*

3. Petitioner was engaged in the business of trading of various oils and food grains and possessed GST Registration.

4. Show Cause Notice dated 01.02.2023 was issued to the Petitioner. Though the notice does not specify any cogent reason, it merely states "*In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts*". Said Show Cause Notice required the petitioner to appear on 06.02.2023 at 12:10 PM before the undersigned i.e., authority issuing the notice. However, the said Notice does not give the name of the officer or place where the petitioner had to appear. It merely has digital signatures, which mention "*digitally signed by DS GOODS AND SERVICES TAX NETWORK 07*".

5. 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.

6. Thereafter, the impugned order dated 10.02.2023 was passed on the Show Cause Notice dated 01.02.2023. However, it does not give any reasons for cancellation. It merely states that the registration is liable to be cancelled for the following reasons "*On physical verification at the principal place of business the party has been found to be non-existent*". The order further states that effective date of cancellation of registration is 21.05.2018 i.e., a retrospective dated. 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.

7. Learned counsel for the petitioner submits that earlier a Show Cause notice was issued on 19.02.2020 on the ground that *"Registration has been obtained by means of fraud, willful misstatement or suppression of facts"*. Thereafter vide order dated 16.03.2020 GST Registration was cancelled by the Respondent w.e.f. 16.03.2020. Petitioner filed an application seeking revocation of cancellation of GST registration and vide order dated 30.01.2023 the revocation application was allowed and the GST Registration of the Petitioner was restored. Immediately thereafter on 01.02.2023, subject impugned show cause notice was issued once again proposing to cancel the registration on the same ground.

8. Learned counsel for the Petitioner submits that Petitioner and Late Mr. Rupesh Agarwal were carrying on business as a partnership firm. However, due to the demise of Mr. Rupesh Agarwal the business was shut down. He submits that Petitioner is no longer interested in continuing the business and has closed down all business activities since 16.03.2020.

9. It may be noticed that the Show Cause Notice dated 01.02.2023 and the impugned order dated 10.02.2023 are also bereft of any details. On the same identical ground a showcase notice was issued on 19.02.2020 and registration cancelled on 16.03.2020. Thereafter the same was revoked by order dated 30.01.2023 and immediately thereafter another notice has been issued within two days on the same ground. There is no reference to the earlier proceedings or any change in circumstances. Accordingly, the Show Cause Notice dated 01.02.2023 and the impugned order dated 10.02.2023 cannot be sustained and they also do not spell out the reasons for retrospective cancellation.

10. 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.

11. 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 in 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.

12. It is clear that both the Petitioner and the respondent want the GST registration to be cancelled, though for different reason.

13. In view of the fact that Petitioner does not seek to carry on business or continue under the said registration, the impugned order dated 10.02.2023 is modified to the limited extent that registration shall now be treated as cancelled with effect from 19.02.2020 i.e., the

date of issuance of the first Show Cause Notice. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.

14. 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 after giving a proper show cause notice and an opportunity of hearing.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 16, 2024
RM