$~6

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

% Date of decision: 08.04.2024

\+ W.P.(C) 4537/2024 & CM APPL. 18604/2024 (for exemption)

SADHNA KOHLI .... Petitioner

versus

SALES TAX OFFICER
CLASS II, AVATO WARD 80 & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Preetam Singh, Advocate.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar & Ms. Samridhi 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 21.02.2020 whereby the GST Registration of the petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice 07.01.2020.

2. Vide Show Cause Notice dated 07.01.2020, petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons;

> "*Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months*"

3. Petitioner was the proprietor of Sai Surgicant & Pharmaceutical and possessed GST Registration.

4. Petitioner was issued Show Cause Notice dated 13.02.2019 on the ground that "*firm not found functioning at the time inspection*". Pursuant to the said show cause notice the GST Registration of the petitioner was cancelled vide order dated 23.02.2019 on the ground "*whereas no reply to notice to show cause has been submitted"*. The GST registration was cancelled w.e.f 01.07.2017.

5. Thereafter, Petitioner filed an application for Revocation of cancellation of GST registration, which was allowed and the GST Registration of the petitioner was restored vide order dated 05.12.2019.

6. A Show Cause Notice dated 07.01.2020 was issued to the petitioner. Though the notice does not specify any cogent reasons, it merely states "*Any tax prayer other than composition tax prayer has not filed returns for a 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, petitioner had no opportunity to even object to the retrospective cancellation of the registration.

7. Thereafter, the impugned order dated 21.02.2020 was issued on Show Cause Notice dated 07.01.2020. Though it does not give any reasons for cancellation, it, however, states that the registration is liable to be cancelled for the following reasons "*Whereas no reply to*

notice to show cause notice has been submitted". However, the said order in itself is contradictory. The order states "*reference to your reply dated 16/01/2020 in response to the notice to show cause dated 07/01/2020* "and the reason stated for cancellation is "*whereas no reply to notice to show cause notice has been submitted*". The order further states that effective date of cancellation of registration is 01.07.2017 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. Learned counsel for Petitioner submits that Petitioner is no longer continuing business and the business activities of the Petitioner have been closed down. He further submits that due to Petitioner has filed all returns till April 2019 and due to ill health Petitioner was unable to inform the department about the closure of business.

9. 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.

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

11. 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.

12. 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 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 warrant .

13. 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.

14. In view of the above that Petitioner does not seek to carry on business or continue the registration, the impugned order dated is 21.02.2020 modified to the limited extent that registration shall now be treated as cancelled with effect from 07.01.2020. i.e., the date when 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

15. 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 08, 2024/*vp*