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

+ **W.P.(C) 4826/2024**

ESSAR FOODS AND COMMODITIESPetitioner

Through: Mr. Rajesh Jain, Mr. Virag
Tiwari, Mr. Rishabh Jain, Mr.
Ramashish, Mr. Himank Ahuja,
Ms Tanya, Advs.

versus

COMMISSIONER OF CGST DELHI WEST.....Respondent

Through: Mr. Anish Roy, SSC with Mr.
Girish Agarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **16.10.2024**

1. This writ petition has been preferred seeking the following
reliefs:-

“a) quash and set aside the impugned order in appeal dated
16.6.2023 passed by the Jt. Comnr. upholding the order of rejection
of application for revocation of cancellation dated 30.12.2022
passed by the Asstt. Comnr. of CGST Delhi West and update the
registration details on the portal;

b) direct cancellation of the registration certificate of the petitioner
w.e.f. 22.10.2022 when the show cause notice was issued instead
of 30.11.2017;

c) restrain the respondent from imposing any
penalty/interest/fine/other charges etc. against the returns to be
filed post restoration for a period of four weeks from the day
access to the portal made available;

d) issue a Writ of Mandamus or any other Writ, order or direction;

e) pass any other order or orders, direction or directions as this
Hon'ble Court may deem fit and proper in the facts and
circumstances of the case.”



2. As would be evident therefrom, although a challenge is laid to the decisions rendered by the respondents while dealing with the application of the petitioner for revocation of cancellation, the petitioner also seeks the issuance of an appropriate writ providing for the cancellation to take effect from the date of the **Show Cause Notice**¹ dated 22 October 2022, instead of 30 November 2017. It is this prayer which has been principally addressed by Mr. Jain, learned counsel who appears for the writ petitioner before us.

3. Shorn of unnecessary details, the essential facts leading up to the filing of the present writ petition would appear to be as follows.

4. On 22 October 2022, the respondents issued a SCN calling upon the petitioner to explain why its registration ought not to be cancelled. This, since and according to them, on due inquiry it had been found that the petitioner was a non-existent entity. In terms of the very same order, the registration of the petitioner under the **Central Goods and Services Tax Act, 2017**² also came to be placed in suspension.

5. Since the petitioner failed to furnish any response to that notice, the respondents proceeded ahead and passed a final order of cancellation dated 22 October 2022. The relevant parts of the said order are extracted hereinbelow: -

“Order for Cancellation of Registration

This has reference to your reply dated 01/11/2022 in response to the notice to show cause dated 22/10/2022

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 following reason(s).

1. The taxpayer has not submitted any response to the SCN

¹ SCN

² CGST Act



hence the GSTIN is cancelled in terms of Section 29 read with Rule 21 (a) of the CGST Act/Rules, 2017. Cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the Rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

The effective date of cancellation of your registration is 30/11/2017

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and basis thereof is as follows:

The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

Head	Central Tax	State Tax/ UT Tax	Integrated Tax	Cess
Tax	0	0	0	0
Interest	0	0	0	0
Penalty	0	0	0	0
Others	0	0	0	0
Total	0.0	0.0	0.0	0.0

Place: RANGE – 97

Date: 04/11/2022

NISHA ARORA
Superintendent
Ward 205”

6. It is thereafter that the petitioner moved the respondents for revocation of the aforesaid order. That application has also come to be rejected by the respondents on 30 December 2022 and has ultimately been upheld in the Order-in-Appeal dated 16 June 2023.

7. We note that the original SCN dated 22 October 2022 and which constituted the foundation for the action which was initiated against the writ petitioner had at no stage indicated an intent of the respondents to cancel registration with retrospective effect. This



becomes apparent from a reading of the SCN itself and which is reproduced hereinbelow:-

“Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

- 1 The taxpayer was found non existent during the physical verification. Therefore, cancellation of GSTN has been initiated as per Rule 21 (a) of the CGST Rules '2017.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

You are hereby directed to appear before the undersigned on 31/10/2022 at 12:30 PM

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 22/10/2022

Place: Delhi
Date: 22/10/2022

NISHA ARORA
Superintendent
Ward 205: Zone 11: Delhi”

8. While dealing with an identical question, we had in **Riddhi Siddhi Enterprises vs. Commissioner of Goods and Services Tax (CGST), South Delhi & Anr.**³ held as follows:-

“5. As is manifest from a reading of Section 29, clauses (a) to (e) of Section 29(2) constitute independent limbs on the basis of which a registration may warrant cancellation. While the provision does enable the respondents to cancel that registration with retrospective effect, the mere existence or conferral of that power would not justify a revocation

³ W.P.(C) 8061/2024 decided on 25 September 2024



of registration. The order under Section 29(2) must itself reflect the reasons which may have weighed upon the respondents to cancel registration with retrospective effect. Given the deleterious consequences which would ensue and accompany a retroactive cancellation makes it all the more vital that the order be reasoned and demonstrative of due application of mind. It is also necessary to observe that the mere existence of such a power would not in itself be sufficient to sustain its invocation. What we seek to emphasise is that the power to cancel retrospectively can neither be robotic nor routinely applied unless circumstances so warrant. When tested on the aforesaid precepts it becomes ex facie evident that the impugned order of cancellation cannot be sustained.

6. We note that while dealing with the right of the respondents to cancel GST registration with retrospective effect and the manner in which such power should be exercised in accordance with the statutory scheme was an issue which was noticed in **Ramesh Chander vs Assistant Commissioner of Goods and Services Tax, Dwarka Division, CGST Delhi & Anr.**⁴ The Court in Ramesh Chander taking note of the contours of Section 29 had held:-

“1. The petitioner impugns order in appeal dated 29.12.2023, whereby the appeal filed by the petitioner has been dismissed solely on the ground of limitation. Petitioner had filed the appeal impugning order dated 13.07.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 07.04.2022.

2. Vide impugned Show Cause Notice dated 07.04.2022, 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 in the business of services involving repair, alterations, additions, replacements, renovation, maintenance or remodelling of the building covered above, General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks, General construction services of long-distance underground/ overland/ submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works, General construction services of local water & sewage pipelines, electricity and communication cables & related works, Installation, assembly and erection services of other prefabricated structures and constructions and possessed a GST registration.



4. A show cause notice was issued to the petitioner on 07.04.2022. Though the notice does not specify any cogent reason, there is an observation in the notice stating failure to furnish returns for a continuous period of six months. The show cause notice requires the petitioner to appear before the undersigned i.e. authority issuing the notice. Notice does not give the name of the officer or place or time where the petitioner has to appear.

5. Further the order dated 13.07.2022 passed on the show cause notice does not give any reasons for cancellation of the registration. It, however, 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 16.04.2022 in response to the notice to show cause dated 07.04.2022" 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 01.07.2017 i.e. retrospective date.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 13.07.2022 does not qualify as an order of cancellation of registration.

7. As per the petitioner, the said order reflected that the GST of the Petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the Petitioner.

8. We notice that the show cause notice as well as the impugned order of cancellation, are themselves vitiated on account of lack of reason and clarity. The appeal has been dismissed solely on the ground of limitation. Since the very foundation of entire proceedings i.e. show cause notice and the order of cancellation are vitiated, we are of the view that no purpose would be served in relegating the petitioner to the stage of an appeal.

9. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, 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. The 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 in this regard is correct, it would follow that the proper officer is also 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. The show cause notice does not even state that the registration is liable to be cancelled from a retrospective date.

12. The petition is allowed. The impugned show cause notice dated 07.04.2022, order of cancellation dated 13.07.2022 and the order in appeal dated 29.12.2023 are accordingly set aside. GST registration of the petitioner is restored, subject to petitioner filing requisite returns upto date.

13. It is clarified that since the petitioner could not have filed the return after the GST registration was suspended, there shall be no liability to pay any penalty or fine for delayed filing. However, this would only apply in case petitioner files an affidavit of undertaking that petitioner has not carried out any business or raised invoices or taken any Input Tax Credit after the registration was suspended with effect from 07.04.2022 i.e., the date of suspension of the registration.

14. Respondent would be at liberty to initiate appropriate proceedings in accordance with law after giving a proper show cause notice containing complete details, if so advised. Further this order would not preclude the respondent from initiating any steps in accordance with law, if it is found that the petitioner had violated any provisions of the Act.

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

7. We further take note of the judgment in **Delhi Polymers vs Commissioner, Trade and Taxes & Anr.**⁵ wherein the following was observed:-

"1. Petitioner has filed the appeal impugning order of cancellation of registration dated 15.12.2021 whereby the GST registration of the Petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show



Cause Notice dated 04.09.2021.

2. Vide Show Cause Notice dated 04.09.2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

“Collects any amount representing the tax but fails to pay the same to the account of the Central/State Government beyond a period of three months from the date on which such payment becomes due”

3. Petitioner was engaged in the business of Sanitary ware Products & Accessories i.e., Baths, Shower, Washbasins, Seats and Cover etc. and possessed GST registration.

4. Show Cause Notice dated 04.09.2021 was issued to the Petitioner seeking to cancel its registration. However, the 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.

5. Further, the impugned order dated 15.12.2021 passed on the Show Cause Notice dated 04.09.2021 does not give any reasons for cancellation. It, however, states that the registration is liable to be cancelled for the following reason “whereas no reply to the show cause notice has been submitted”. However, the said order in itself is contradictory. The order states “reference to your reply dated 15.12.2021 in response to the notice to show cause dated 04.09.2021” and the reason stated for the cancellation is “whereas no reply to notice show cause has been submitted”. The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 15.12.2021 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 the Petitioner submits that the said order reflected that the GST registration of petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the Petitioner.

8. He further submits that the petitioner is no longer interested in continuing the business and the business has been discontinued.

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 may be further noted that both the Petitioners and the department want cancellation of the GST registration of the Petitioner, though for a different reason.

12. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 15.12.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 04.09.2021 i.e., the date when the Show Cause Notice was issued.

13. 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.

14. Petition is accordingly disposed of in the above terms."

8. In view of the aforesaid and in light of an abject failure on the part of the authority to assign even rudimentary reasons for a retroactive cancellation, we find ourselves unable to sustain the order impugned."

9. As was noted in the aforesaid decision, the mere existence of a power to cancel with retrospective effect would not justify such a step being adopted unless reasons be assigned to support such a decision



and the assessee being placed on due notice. It is in the aforesaid backdrop and to the aforesaid extent that we find ourselves unable to sustain the orders impugned before us.

10. We, accordingly, allow the present writ petition and quash the impugned Order-in-Appeal dated 16 June 2023 as well as the Order-in-Original dated 30 December 2022. We, however, provide that cancellation of registration of the writ petitioner shall take effect from 22 October 2022 and which constitutes the date of issuance of SCN.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 16, 2024/DR