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

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Date of decision: 10.04.2024

+ W.P.(C) 4840/2024

BAKSHI AEROSOLE THROUGH ITS PROPRIETOR MS SUMAN
ARORA Petitioner

versus

COMMISSIONER OF DGST DELHI & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. M. A. Ansari, Mr. Khursheed Ahmed,
Mohd Kamil, Mohd. Ikram & Mr. Ahmad
Ansari, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms Shaguftha
Hameed & 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 01.03.2024 whereby the appeal of the Petitioner has been dismissed solely on the ground that the same is barred by limitation. Petitioner also impugns order dated 24.09.2019 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.01.2018 and also impugns Show Cause Notice dated 11.06.2019.



2. Vide Show Cause Notice dated 11.06.2019, 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 Tanks, Casks, Drums, Cans, Boxes and similar containers and possessed GST registration.

4. Said Show Cause Notice dated 11.06.2019 was issued to the petitioner seeking to cancel its registration. Though the notice does not specify any cogent reason, it merely states *“Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months”*. The Show Cause Notice required the petitioner to appear before the undersigned i.e., authority issuing the notice. However, the said notice does not bear the date and time whereby the Petitioner was required to appear for personal hearing.

5. 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.

6. Thereafter, impugned order dated 24.09.2019 passed on the Show Cause Notice does not give any reasons for cancellation. It merely 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 20/06/2021 in response to the notice to show cause dated 11/06/2019"* 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 01.01.2018 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively. Further, It may be noted that 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. Pursuant to the said impugned order, Petitioner filed an application dated 02.11.2019 seeking revocation of cancellation of GST registration. On the said application, Petitioner was issued Show Cause Notice dated 24.05.2022 for rejection of application for revocation of cancellation of registration. It merely stated *"Any Supporting Document - Others (Please specify) - GSTIN is neither Aadhaar Authenticated nor e-KYC verified."*

8. Thereafter, vide order dated 04.07.2022, the application for revocation was rejected on the ground that *"You have not replied to the notice issued vide reference no. ZA070522084071U dated 24/05/2022 within the time specified therein. Therefore, your application is hereby rejected in accordance with the provisions of the Act"*.



9. Learned counsel for Petitioner submits that the Petitioner was unable to conduct business because of the owner's ill health resulting in default of filing returns and obeying notices.

10. We notice that the Show Cause Notice and the impugned order are bereft of any details. Accordingly, the same cannot be sustained. Neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation.

11. 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.

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 taxpayer 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.

13. In view of the aforesaid, order dated 24.09.2019 cannot be sustained and is accordingly set aside. The GST registration of the petitioner is restored. Petitioner shall, however, make all necessary compliances and file the requisite returns and information *inter alia* in terms of Rule 23 of the Central Goods and Services Tax Rules, 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 notice and an opportunity of hearing.

15. The petition is accordingly disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 10, 2024/sk