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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 08.04.2024

+ W.P.(C) 5052/2024

HANSRAJ TILES WORLD

..... Petitioner

versus

COMMISSIONER OF DGST DELHI & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. M.A. Ansari, Mr. Khursheed Ahmad, Mr. Mohd Kamil and Mr. Mohd Ikram, Advocates
For the Respondents: Mr. Rajiv Aggarwal, ASC with Ms. Samridhi Vats, Advocate

CORAM:-**HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order dated 13.02.2024 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 29.06.2021 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017 and also impugns Show Cause Notice dated 11.03.2021.



2. Petitioner is engaged in the business of trading sanitary goods and possessed GST Registration.
3. Petitioner had submitted an application seeking cancellation of GST Registration dated 17.10.2020 on the ground of closure of business due to the lockdown and the ill health of the proprietor.
4. Pursuant to the said application, Notice dated 11.02.2021 was issued to the petitioner seeking additional information and documents relating to application for cancellation of registration. The application seeking cancellation of registration was rejected vide order dated 02.03.2021.
5. Thereafter, impugned Show Cause Notice dated 11.03.2021 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.*”
6. 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. Further, the impugned order dated 29.06.2021 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 20/03/2021 in response to the notice to show cause dated 11/03/2021*” 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., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

8. 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.

9. Learned counsel for petitioner submits that the petitioner is no longer interested in continuing business and has closed down his business activities due to the lockdown and ill health of the proprietor.

10. 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.



11. 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.

12. 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.



13. It is clear that both the petitioner and the respondent want the GST registration to be cancelled, though for different reasons.

14. In view of the above that the Petitioner does not seek to carry on business or continue the registration, the impugned order dated is modified to the limited extent that registration shall now be treated as cancelled with effect from 17.10.2020 i.e., the date when the petitioner filed an application seeking cancellation of GST registration. 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 8, 2024
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