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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 20.05.2024

+ W.P.(C) 5264/2024 & CM APPL. 21559/2024

RAVI PARKASH GOEL, PROPRIETOR OF
M/S. GOPISH PHARMA

..... Petitioner

versus

SALES TAX OFFICER CLASS II/AVATO,
WARD 71, DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Puneet Rai and Ms. Srishti Sharma, Advocates

For the Respondents: Mr. Rajeev Aggarwal, ASC with Mr. Prateek
Badhwar and Ms. Shaguftha Badhwar, Advocates**CORAM:-****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order dated 30.11.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect



from 01.07.2017 and also impugns Show Cause Notice dated 30.05.2022.

2. Petitioner was engaged in the business of plastic granules, pvc compound etc.and possessed GST Registration under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

3. Petitioner submitted an application dated 25.04.2022 seeking cancellation of the GST Registration on the ground of closure of business.

4. Pursuant to the said application, Notice dated 26.04.2022 was issued to the petitioner seeking additional information and documents relating to the application for cancellation of registration. However, the application seeking cancellation of registration was rejected vide order dated 30.05.2022. Though the said order does not give any specific reasons for rejection, it merely states *“The reply has been examined and the same has not been found to be satisfactory for the following reasons”* Said order does not give any particulars or details.

5. Thereafter, impugned Show Cause Notice dated 30.05.2022 was issued to the Petitioner seeking to cancel its registration. Said notice also does not specify any cogent reason, it merely states *“Issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder*



leading to wrongful availment or utilization of input tax credit or refund of tax.” Said 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, time and name of the officer or place where the petitioner was required to appear for personal hearing. It merely has digital signatures and mentions “*digitally signed by DS GOODS AND SERVICES TAX NETWORK (4).*”

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. Thereafter, impugned order dated 30.11.2022 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 13/10/2022 in response to the notice to show cause dated 30/05/2022*” 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., a retrospective date. There is no



material on record to show as to why the registration is sought to be cancelled retrospectively. 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. As per the petitioner, all returns have been filed till March 2022 i.e., till the business was functional.

9. Learned counsel for petitioner submits that the petitioner is no longer interested in continuing business and has closed down all business activities due to the Petitioners old age.

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

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 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 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 30.11.2022 is modified to the limited extent that registration shall now be treated as cancelled with effect from 25.04.2022 i.e., the date when petitioner filed an application seeking cancellation of GST registration.



15. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.

16. 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 notice and a personal hearing to the Petitioner.

17. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MAY 20, 2024/‘rs’

RAVINDER DUDEJA, J