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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 16.04.2024

\+ **W.P.(C) 5382/2024 & CM APPL. 22171-72/2024**

SUMEET SINGH LEGAL HEIR OF LATE SH. MOHINDER MOHAN SINGH PROPRIETOR OF M/S SARAN SINGH AND SONS ..... Petitioner

Versus

COMMISSIONER OF DELHI GOODS AND SERVICES TAX AND ORS. .... Respondents

Advocates who appeared in this case:

For the Petitioner: Dr. Chakit Singhal, Mr. Suresh Kumar Singhal, Mr. Mohit Singhal, Mr.Aditya Shubha and Ms. Sonali Singla, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms. Shaguftha H. Badhwar, Mr. Prateek Badhwar and 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 12.03.2023 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

02.12.2022 whereby the GST registration of the Petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 02.09.2021.

2. Issue notice. Notice is accepted by learned counsel appearing for respondent. With the consent of the parties, petition is taken up for final disposal today.

3. Vide Show Cause Notice dated 02.09.2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

> *"returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017"*

4. Subject petition has been filed by Sh. Sumeet Singh, legal heir of Late Sh. Mohinder Mohan Singh, who was the proprietor of M/s Saran Singh & Sons. Petitioner was engaged in the business of supplying spices and dry fruits and was registered under the Goods and Service Act, 2017 (hereinafter referred to as 'the Act').

5. Show Cause Notice dated 02.09.2021 was issued to the Petitioner. Though the notice does not specify any cogent reason, it merely states *"returns furnished by you under section 39 of the Central Goods and Services Tax Act,2017"* along with an observation stating *"failure to furnish returns for a continuous period of six*

months". Said Show Cause Notice required the petitioner to appear on 02.10.2021 at 11:00 before the undersigned i.e. authority issuing the notice. However, the said Notice does not give the name of the officer where the petitioner has to appear. It merely mentions "*Jurisdiction Officer*".

6. Further, the 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, the impugned order dated 02.12.2022 passed on the Show Cause Notice dated 02.09.2021 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 notice to show cause has been submitted"*. Further, said order in itself is contradictory. The order states *"reference to your reply dated 14/11/2022 in response to the notice to show cause dated 02/09/2021"* 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. 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.

8. Learned counsel for Petitioner submits that Sh. Mohinder Mohan Singh passed away on 16.10.2020 and all requisite tax returns were filed up to October 2020. He further submits that the business was closed down and no business was carried out by the legal heirs under the subject GST number and if the legal heirs intend to carry out on business, they shall do so under their own GST registration.

9. The fact that the order on the one hand states that no reply has been filed and on the other hand refers to a reply dated 14.11.2022, shows complete non-application of mind, particularly when the Proprietor had passed away and no reply was filed.

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 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 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 warranted.

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 facts that Petitioner does not seek to carry on business or continue with the registration, the impugned order dated 02.12.2022 is modified to the limited extent that registration shall now be treated as cancelled with effect from 16.10.2020 i.e., the

date when Sh. Mohinder Mohan Singh passed away. 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 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 issuance of a proper Show Cause Notice and complying with the provisions of natural justice.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 16, 2024
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