



\$~48

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

% Date of decision: 22.04.2024

+ W.P.(C) 5499/2024 & CM APPL. 22616/2024
KALPANA CABLES PRODUCTS PVT. LTD. Petitioner

versus

THE COMMISSIONER, DEPARTMENT OF TRADES AND
TAXES & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Abu John Mathew, Advocate.
For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms. Samridhi
Vats, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 01.01.2021 whereby the GST Registration of the petitioner was cancelled retrospectively with effect from 01.12.2017. Petitioner also impugns Show Cause Notice dated 01.09.2020.
2. Issue notice. Notice accepted by Learned counsel appearing for Respondent. With the consent of parties, petition is taken up for final disposal today.
3. Petitioner is a private limited company and was engaged in the business of manufacturing of PVC copper wire and also possessed



GST Registration under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

4. Petitioner applied for cancellation of GST registration on 21.05.2019 on the ground of closure of business.

5. Pursuant to the said application, Notice dated 17.03.2020 was issued to the petitioner seeking additional information and documents relating to application for cancellation of registration. The said application was rejected vide order dated 05.06.2020, and merely stated “*Whereas the undersigned is of the opinion that your provisional registration is liable to be cancelled for following reasons*” and thereafter the entire order is blank and does not give any particulars or details.

6. Thereafter, Show Cause Notice dated 01.09.2020 was issued to the Petitioner seeking cancellation of GST registration. Though the notice does not specify any cogent reasons, it merely states “*Any Taxpayer other than composition taxpayer has not filed returns for a continuous period six months*”. Said Show Cause Notice required the petitioner to appear before the undersigned i.e., authority issuing the notice. However, the said Notice did not bear the date and time whereby the Petitioner was required to appear for personal hearing.

7. Said 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.



8. Further the impugned order dated 01.01.2021 passed on the Show Cause Notice dated 01.09.2020. Though it does not give any reasons for cancellation, it, however states that the registration is liable to be cancelled for the following reasons “*on-filing of gst3b up to November 2020*. The order further states that effective date of cancellation of registration is 01.12.2017 i.e. a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

9. 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.

10. Learned counsel for the Petitioner submits that on account of ill health of one of the directors Shri Chatar Singh, Petitioner is no longer continuing business and the business activities of the Petitioner have been closed down since 21.05.2019.

11. He further submits that since Petitioner had shut down the business and filed an application for cancellation on 21.05.2019, there would have been an automatic suspension of GST registration and as such, Petitioner could not carry on the business and could not file the required returns.

12. We notice that Show Cause Notice and the impugned order are also 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.

13. 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.

14. 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 warrant.



15. 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.

16. In view of the above that Petitioner does not seek to carry on business or continue the registration and an application for cancellation of registration appears to be filed, the impugned order dated 01.01.2021 modified to the limited extent that registration shall now be treated cancelled with effect from 30.04.2019 i.e., the date from which petitioner sought cancellation of GST registration.

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

18. 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 Show Cause Notice and an opportunity of hearing.

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

SANJEEV SACHDEVA, J

PURUSHAINDR KUMAR KAURAV, J

APRIL 22, 2024/vp