



\$~20

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

+ **W.P.(C) 5892/2024**

M/S AKASH GARMENTS INDIA PVT LTDPetitioner

Through: Mr. N.K. Sharma, Adv.

versus

UNION OF INDIA & ANR.Respondents

**Through: Ms. Shreya Bhardwaj, SPC for
UOI.**

**Mr. Harpreet Singh, SSC with
Ms. Suhani Mathur, Mr.
Shivang Chawla, Advs.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

%

11.11.2024

1. This writ petition has been preferred seeking the following reliefs:-

- a. Issue a writ of certiorari or in the nature of certiorari to set aside the Show Cause Notice dated 15/01/2023 and order date 28.02.2023 of Cancellation of GST Registration w.e.f. 02.07 .2017 by proper officer.
- b. Issue a writ of mandamus or in the nature of mandamus directing the respondents to cancel the GST registration from the date of application for cancellation i.e. 30.01 .2021 and not retrospectively from the date of GST registration i.e. 02.07.2017.
- c. As any other writ/ direction/ order as the Hon' ble Court deems just and appropriate in the facts and circumstances."

2. The petitioner is essentially aggrieved by the order cancelling its Goods and Services Tax registration with retrospective effect from 02 July 2017. The reliefs thus claimed was restricted to the aforesaid



issue only.

3. The record would reflect that the petitioner had earlier moved an application seeking cancellation of its registration under the **Central Goods and Services Tax Act, 2017¹** on 30 January 2021. While examining that application, the respondents had issued a notice dated 01 February 2021 requiring further details to be submitted. However, and since the petitioner failed to respond to that notice, a final order on 13 February 2021 came to be passed rejecting its application for cancellation.

4. It is thereafter that a **Show Cause Notice²** dated 15 January 2023 came to be issued. That notice reads as under:-

“Show case Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1. returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017

Observations

Failure of furnish returns for a continuous period of six months

You are hereby directed to furnish a reply to the notice within thirty days from the date of service of this notice.

You are hereby directed to appear before the undersigned on 13/02/2023 at 11:00

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 15/01/2023”

¹ Act

² SCN



5. As is manifest from the above, the allegation which formed the basis for that notice was a purported failure on the part of the petitioner to furnish returns as required under Section 39 of the Act. The respondents had alleged that the petitioner had failed to furnish returns for a continuous period of six months.

6. The petitioner is stated to have thereafter filed a reply on 15 February 2023. However, and while passing the final order dated 28 February 2023 which is impugned before us, the respondents have held as follows:-

“Order for Cancellation of Registration

This has reference to your reply dated 15/02/2023 in response to the notice to show cause dated 15/01/2023 Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s).

1. No response received from the taxpayer. High availment of ITC. Mobile no not working.

The effective date of cancellation of your registration is 02/07/2017

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and basis thereof is as follows:

The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

Head	Central Tax	State Tax/UT Tax	Integr ated Tax	Cess
Tax	0	0	0	0
Interest	0	0	0	0
Penalty	0	0	0	0



Others	0	0	0	0
Total	0.0	0.0	0.0	0.0

”

7. As is manifest from the above, the respondents have taken the position that no response had been received from the taxpayer and that it would also be evident from the record that the petitioner had incorrectly availed ITC benefits. However, we need not go into those issues since the challenge and the present writ petition stands restricted to the retrospective cancellation of the petitioners’ registration under the Act.

8. While speaking on the power that stands conferred by Section 29 of the Act, we had in **Riddhi Siddhi Enterprises vs. Commissioner of Goods and Services Tax (CGST), South Delhi & Anr.**³ held as follows:-

“5. As is manifest from a reading of Section 29, clauses (a) to (e) of Section 29(2) constitute independent limbs on the basis of which a registration may warrant cancellation. While the provision does enable the respondents to cancel that registration with retrospective effect, the mere existence or conferral of that power would not justify a revocation of registration. The order under Section 29(2) must itself reflect the reasons which may have weighed upon the respondents to cancel registration with retrospective effect. Given the deleterious consequences which would ensue and accompany a retroactive cancellation makes it all the more vital that the order be reasoned and demonstrative of due application of mind. It is also necessary to observe that the mere existence of such a power would not in itself be sufficient to sustain its invocation. What we seek to emphasise is that the power to cancel retrospectively can neither be robotic nor routinely applied unless circumstances so warrant. When tested on the aforesaid precepts it becomes ex facie evident that the impugned order of cancellation cannot be sustained.

6. We note that while dealing with the right of the respondents to cancel GST registration with retrospective effect and the manner in which such power should be exercised in accordance with the statutory scheme was an issue which was noticed in **Ramesh Chander vs Assistant Commissioner of Goods and Services Tax, Dwarka Division, CGST**

³ W.P.(C) 8061/2024 decided on 25 September 2024



Delhi & Anr.⁴ The Court in Ramesh Chander taking note of the contours of Section 29 had held:-

“1. The petitioner impugns order in appeal dated 29.12.2023, whereby the appeal filed by the petitioner has been dismissed solely on the ground of limitation. Petitioner had filed the appeal impugning order dated 13.07.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 07.04.2022.

2. Vide impugned Show Cause Notice dated 07.04.2022, petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-

“Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months”

3. Petitioner was in the business of services involving repair, alterations, additions, replacements, renovation, maintenance or remodelling of the building covered above, General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks, General construction services of long-distance underground/ overland/ submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works, General construction services of local water & sewage pipelines, electricity and communication cables & related works, Installation, assembly and erection services of other prefabricated structures and constructions and possessed a GST registration.

4. A show cause notice was issued to the petitioner on 07.04.2022 Though the notice does not specify any cogent reason, there is an observation in the notice stating failure to furnish returns for a continuous period of six months. The show cause notice requires the petitioner to appear before the undersigned i.e. authority issuing the notice. Notice does not give the name of the officer or place or time where the petitioner has to appear.

5. Further the order dated 13.07.2022 passed on the show cause notice does not give any reasons for cancellation of the registration. 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". However, the said order in itself is contradictory, the order states "reference to your reply dated 16.04.2022 in response to the notice to show cause dated 07.04.2022" 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. retrospective date.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 13.07.2022 does not qualify as an order of cancellation of registration.

7. As per the petitioner, the said order reflected that the GST of the Petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the Petitioner.

8. We notice that the show cause notice as well as the impugned order of cancellation, are themselves vitiated on account of lack of reason and clarity. The appeal has been dismissed solely on the ground of limitation. Since the very foundation of entire proceedings i.e. show cause notice and the order of cancellation are vitiated, we are of the view that no purpose would be served in relegating the petitioner to the stage of an appeal.

9. 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. 10. 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 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.

11. The show cause notice does not even state that the registration is liable to be cancelled from a retrospective date.

12. The petition is allowed. The impugned show cause notice dated 07.04.2022, order of cancellation dated 13.07.2022 and



the order in appeal dated 29.12.2023 are accordingly set aside. GST registration of the petitioner is restored, subject to petitioner filing requisite returns upto date.

13. It is clarified that since the petitioner could not have filed the return after the GST registration was suspended, there shall be no liability to pay any penalty or fine for delayed filing. However, this would only apply in case petitioner files an affidavit of undertaking that petitioner has not carried out any business or raised invoices or taken any Input Tax Credit after the registration was suspended with effect from 07.04.2022 i.e., the date of suspension of the registration.

14. Respondent would be at liberty to initiate appropriate proceedings in accordance with law after giving a proper show cause notice containing complete details, if so advised. Further this order would not preclude the respondent from initiating any steps in accordance with law, if it is found that the petitioner had violated any provisions of the Act.

15. Petition is disposed of in the above terms.”

7. We further take note of the judgment in **Delhi Polymers vs Commissioner, Trade and Taxes & Anr.**⁵ wherein the following was observed:-

“1. Petitioner has filed the appeal impugning order of cancellation of registration dated 15.12.2021 whereby the GST registration of the Petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 04.09.2021.

2. Vide Show Cause Notice dated 04.09.2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

“Collects any amount representing the tax but fails to pay the same to the account of the Central/State Government beyond a period of three months from the date on which such payment becomes due”

3. Petitioner was engaged in the business of Sanitary ware Products & Accessories i.e., Baths, Shower, Washbasins, Seats and Cover etc. and possessed GST registration.

4. Show Cause Notice dated 04.09.2021 was issued to the Petitioner seeking to cancel its registration. However, the 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.

5. Further, the impugned order dated 15.12.2021 passed on the



Show Cause Notice dated 04.09.2021 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 the show cause notice has been submitted”. However, the said order in itself is contradictory. The order states “reference to your reply dated 15.12.2021 in response to the notice to show cause dated 04.09.2021” and the reason stated for the cancellation is “whereas no reply to notice 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.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 15.12.2021 does not qualify as an order of cancellation of registration. 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. Learned Counsel for the Petitioner submits that the said order reflected that the GST registration of petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the Petitioner.

8. He further submits that the petitioner is no longer interested in continuing the business and the business has been discontinued.

9. 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.

10. 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.

11. It may be further noted that both the Petitioners and the department want cancellation of the GST registration of the Petitioner, though for a different reason.

12. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 15.12.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 04.09.2021 i.e., the date when the Show Cause Notice was issued.

13. 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.

14. Petition is accordingly disposed of in the above terms.”

8. In view of the aforesaid and in light of an abject failure on the part of the authority to assign even rudimentary reasons for a retroactive cancellation, we find ourselves unable to sustain the order impugned.”

9. We consequently, and in the absence of any indication in the SCN of the reasons which weighed upon the respondents to cancel registration with retrospective effect, find ourselves unable to sustain the impugned order.

10. The writ petition is accordingly allowed. The impugned order dated 28 February 2023 to the extent that it purports to operate with effect from 02 July 2017 shall stand quashed. The cancellation shall consequently come into effect from the date of issuance of the SCN namely 15 January 2023.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 11, 2024/neha