



2024:DHC:3388-DB



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

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Date of decision: 26.04.2024

W.P.(C) 5897/2024 & CM APPL. 24329/2024

SWATI GUPTA

..... Petitioner

versus

COMMISSIONER OF DELHI GOODS AND SERVICES TAX
& ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Sumit K. Batra, Mr. Manish Khurana & Ms. Priyanka Jindal, Advocates.

For the Respondent: Mr. Rajeev Aggarwal, ASC.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 28.10.2021 whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 01.07.2017 and also impugns Show Cause Notice dated 30.06.2021. Petitioner further impugns order dated 25.06.2021 dismissing the Application for Cancellation filed by the petitioner seeking cancellation of GST registration.



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

3. Petitioner was engaged in the business of trading raisins and possessed GST Registration under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

4. Petitioner submitted an application dated 20.06.2020 seeking cancellation of the GST Registration on the ground of closure of business.

5. Pursuant to the said application, Notice dated 31.03.2021 was issued to the petitioner seeking additional information and documents relating to the application for cancellation of registration. Petitioner replied to the said notice on 07.04.2021. However, the application seeking cancellation of registration was rejected vide order dated 25.06.2021. Though the said order does not give any specific reasons for rejection, it merely states “*Reply is not satisfactory*”. Said order does not give any particulars or details.

6. Thereafter, impugned Show Cause Notice dated 30.06.2021 was issued to the Petitioner seeking to cancel its registration. Said notice also 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.*” Said Show Cause Notice required the petitioner to appear before the undersigned i.e., authority issuing



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the notice. However, the said Notice did not bear the date and time when or where 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. Thus, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

8. Thereafter, impugned order dated 28.10.2021 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 06/10/2021 in response to the notice to show cause dated 30/06/2021*” 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.

9. It may be noted that on one hand, the order 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.



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10. As per the petitioner, all returns have been filed till 31.03.2020, i.e., till the business was functional. No returns have been filed post March 2020 due to closure of business.

11. Learned counsel for petitioner submits that the petitioner is no longer interested in continuing business and has closed down all business activities which came to a standstill due to the lockdown period during Covid-19 pandemic.

12. 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.

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.



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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 warranted.

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

16. In view of the above that the Petitioner does not seek to carry on business or continue the registration, the impugned order dated 28.10.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 20.06.2020 i.e., the date when petitioner filed an application seeking 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



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retrospective cancellation of the GST registration after giving a proper notice and a personal hearing to the Petitioner.

19. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 26, 2024/*sk*