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

% Date of decision: 24.04.2024

W.P.(C) 5671/2024 & CM APPLs. 23436-37/2024

CHIMA RAM HARNAND RAI ..... Petitioner

versus

PRINCIPAL COMMISSIONER DEPARTMENT OF TRADE AND TAXES GOVERNMENT OF NCT OF DELHI AND ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Prabhat Kumar and Mr. Karan Kanwal, 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 05.04.2024 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 20.04.2023 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 07.07.2017 and also impugns Show Cause Notice dated 02.03.2023.

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. Petitioner is engaged in the business of plastic raw material and possessed GST Registration under the Central Goods and Services Act, 2017 (hereinafter referred to as the Act).

4. Petitioner had submitted an application dated 02.07.2022 seeking cancellation of GST Registration on the ground of closure of business due to the ailing health of the Petitioner.

5. Pursuant to the said application, Notice dated 04.07.2022 was issued to the petitioner seeking additional information and documents relating to application for cancellation of registration. The application seeking cancellation of registration was rejected vide order dated 03.10.2022.

6. 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*". The entire order is thereafter blank and merely states that the application is rejected in accordance with the provisions of the Act. Said order does not give any particulars or details.

7. Thereafter, impugned Show Cause Notice dated 02.03.2023 was issued to the Petitioner seeking to cancel its registration. 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*".

8. Said Show Cause Notice required the petitioner to appear on 30.03.2023 at 11:00 AM before the undersigned i.e., authority issuing the notice. However, the said Notice does not give the name of the officer or place where the petitioner had to appear. It merely mentions "*Jurisdiction Officer*" and the digital signatures in the Show Cause Notice merely mentions "*digitally signed by DS GOODS AND SERVICES TAX NETWORK 07*."

9. 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.

10. Further, the impugned order dated 20.04.2023 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 02/04/2023 in response to the notice to show cause dated 02/03/2023"* 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 07.07.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

11. 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.

12. As per the Petitioner, he was not aware of the notice and orders cancelling GST registration of the Petitioner.

13. Learned counsel for petitioner submits that the petitioner is no longer interested in continuing business and has closed down his business activities due to his ailing health. He submits that as business activities were closed, the Petitioner did not file any returns.

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

15. 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.

16. 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 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.

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

18. In view of the above that the Petitioner does not seek to carry on business or continue the registration, the impugned order dated is modified to the limited extent that registration shall now be treated as cancelled with effect from 02.07.2022 i.e., the date when the petitioner filed an application seeking cancellation of GST registration.

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

20. Petition is disposed of in the above terms.

21. 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 to the petitioner.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 24, 2024/*vp*