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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 01.05.2024

+ W.P.(C) 6120/2024 & CM APPL. 25425/2024

KOMAL ENTERPRISES

..... Petitioner

versus

THE COMMISSIONER OF GST DELHI & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajesh Singla and Mr. Pramod Gupta,
Advocates

For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms. Samridhi
Vats, Advocate for CBIC

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 17.07.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.09.2018. Petitioner also impugns Show Cause Notice dated 22.06.2022.

2. Vide Show Cause Notice dated 22.06.2022, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

“Failure to furnish the returns since Jan 2022”



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

4. Petitioner was engaged in the business of trading of Electric Motors & Submersible Pumps and possessed GST Registration under the Central Goods and Services Act, 2017 (hereinafter referred to as the Act).

5. Show Cause Notice dated 22.06.2022 was issued to the petitioner seeking to cancel its registration. Though the notice does not specify any cogent reason, it merely states “*Failure to furnish the returns since Jan 2022*”. Said Show Cause Notice required the petitioner to appear before the undersigned i.e., authority issuing the notice. However, neither does the said notice bear the date and time whereby the Petitioner was required to appear for personal hearing, nor does it give the name of the officer or place where the petitioner was to appear. It merely has digital signatures and mentions “*Digitally signed by DS GOODS AND SERVICES TAX NETWORK(4).*”

6. Further, the 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.

7. Thereafter, impugned order dated 17.07.2022 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 01/07/2022 in response to the notice to show cause dated 22/06/2022” 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 01.09.2018 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

8. 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.

9. As per the petitioner, petitioner had closed his business and submitted an application dated 22.09.2020 seeking cancellation of the GST Registration.

10. As per the petitioner, all returns have been filed till 31.12.2021, i.e., till the business was functional.

11. 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.

12. 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.

13. 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.

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

15. In view of the above that the Petitioner does not seek to carry on business or continue the registration, the impugned order dated 17.07.2022 is modified to the limited extent that registration shall now be treated as cancelled with effect from 22.06.2022 i.e., the date when Show Cause Notice was issued.

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

17. 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.

18. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 1, 2024/‘rs’