2024:DHC:4313-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 22.05.2024

\+ W.P.(C)-6690/2024

UDAYRAJ YADAV PROPRIETOR - ZENITH CREATIVE SERVICES ..... Petitioner

versus

SALES TAX OFFICER CLASS II/AVATO, WARD 96, ZONE -09, DELHI & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Abhishek Garg, Mr. Yash Gaiha and Mr. Ranesh Singh Mankotia, Advocates

For the Respondents: Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar and Ms. Shaguftha Badhwar, Advocates

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 15.05.2023 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017 and also impugns Show Cause Notice dated 27.04.2023.

2. Petitioner was engaged in the business of wholesale and trading of various products and possessed GST Registration bearing number 07AJSPY6068K1Z under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

3. Show Cause Notice dated 27.04.2023 was issued to the Petitioner seeking to cancel its registration. The notice stated, *"Issues any invoice or bill without Act, or the rules made thereunder refund of tax. supply of goods and/or services in violation of the provisions of this leading to wrongful availment or utilization of input tax credit."* Said Show Cause Notice does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Thus, petitioner had no opportunity to object to the retrospective cancellation of the registration.

4. Thereafter, impugned order dated 15.05.2023, 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 and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): Rule 21 (b)- person issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder".*

5. 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.

6. Pursuant to the said impugned order, Petitioner filed an application dated 12.06.2023 seeking revocation of cancellation of GST registration. On the said application, Petitioner was issued Show Cause Notice dated 11.07.2023 for rejection of application for revocation of cancellation of GST registration stating *"Reason for revocation of cancellation - Others (Please specify) - You have availed ITC from SAI Enterprises and Mahadev Enterprises."* Petitioner even filed a reply dated 20.07.2023 to the said Show Cause Notice.

7. Thereafter, vide order dated 18.08.2023, the application for revocation of cancellation was rejected on the ground that *"Reason for revocation of cancellation - Others (Please specify) - You have availed ITC from SAI Enterprises and Mahadev Enterprises."*

8. As per the Petitioner, all GST returns for the period till March 2023 have been filed.

9. Learned counsel for petitioner submits that petitioner is no longer interested in continuing business and has closed down all business activities.

10. We notice that the Show Cause Notice and the impugned order are bereft of any details. Neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation. They also do not give any particulars of the alleged wrongful availment of ITC from SAI Enterprises and Mahadev Enterprises. Accordingly, the same cannot be sustained.

11. 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.

12. 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.

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

14. In view of the above and the fact that the Petitioner does not seek to carry on business or continue the registration, impugned order dated 15.05.2023 is modified to the limited extent that registration shall now be treated as cancelled with effect from 27.04.2023 i.e., the date when Show Cause Notice seeking cancellation of GST registration was issued.

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

16. It is clarified that if there is any wrongful availment of ITC from SAI Enterprises and Mahadev Enterprises or any other ground, it is open to the Respondents to take such appropriate 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 issuing a proper Show Cause Notice and granting an opportunity of hearing to the petitioner.

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

SANJEEV SACHDEVA, J

MAY 22, 2024 **RAVINDER DUDEJA, J**

MR