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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 27.05.2024

\+ W.P.(C)-7635/2024 & CM APPL. 31777/2024

KALPATRU INDUSTRIES ..... Petitioner

versus

THE COMMISSIONER SGST DELHI AND ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. John Mathew, Advocate

For the Respondents: Mr. Rajeev Aggarwal, ASC with Prateek Badhwar, Ms. Shagufth H. Badhwar and Ms. Samrdhi Vats, Advocates

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 27.01.2021 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017 and also impugns Show Cause Notice dated 13.01.2021.

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 a Hindu Undivided Family (HUF) and possessed GST Registration bearing number 07AAEHK4901N1Z3 under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

4. Petitioner submitted an application dated 06.05.2019 seeking cancellation of GST Registration on the ground of closure of business.

5. Pursuant to the said application, Notice dated 16.03.2020 was issued to the petitioner seeking additional information and documents relating to the application for cancellation of registration. However, the application seeking cancellation of registration was rejected vide order dated 05.06.2020. Though the said order does not give any specific reasons for rejection, it merely states "*Whereas the undersigned is of the opinion that your provisional registration is liable to be cancelled for followings reason(s).*" Said order is entirely blank and does not give any particulars or details.

6. Thereafter, impugned Show Cause Notice dated 13.01.2021 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 the notice. However, the said Notice does not bear the date and time whereby 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 27.01.2021 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 22/01/2021 in response to the notice to show cause dated 13/01/2021"* 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 in the impugned order of cancellation, in

the column of dues at the bottom there is 'zero' amount stated to be due against the petitioner and the table shows nil demand.

10. As per the petitioner, the then Karta i.e., Late Shri Kantilal passed away on 22.05.2021.

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

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.

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 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.

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 27.01.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 06.05.2019 i.e., the date when petitioner filed an application seeking cancellation of GST registration and the registration was suspended.

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 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

MAY 27, 2024 **RAVINDER DUDEJA, J**
MR