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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Judgment delivered on: 28.05.2024

+ W.P.(C) 7922/2024 & CM APPL. 32714-715/2024

M/S PRIME INDUSTRIES Petitioner

versus

PRINCIPAL COMMISSIONER & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Yuvraj Singh, Ms. Tanmay Mangal and Mr. Chetan Kumar Shukla, Advocates

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

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 13.02.2024 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 18.08.2022 whereby the GST registration of the petitioner was



cancelled retrospectively with effect from 01.07.2017 and also impugns Show Cause Notice dated 03.02.2022.

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 manufacturing and retailing of iron wire, alloy steel wire, bundles, cables and possessed GST Registration bearing number 07AOUPA5064N1ZF under the Central Goods and Services Act, 2017 (hereinafter referred to as the Act).

4. Petitioner had submitted an application dated 23.04.2021 seeking cancellation of GST Registration on the ground of discontinuance of business/ closure of business.

5. Pursuant to the said application, Notice dated 23.04.2021 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 05.07.2021. 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 followings reason(s).”* Said order is entirely blank and does not give any particulars or details thereafter.



6. Pursuant to the said rejection of application seeking cancellation of GST registration, Petitioner submitted another application dated 20.07.2021 seeking cancellation of GST Registration on the ground of discontinuance of business/ closure of business.

7. Pursuant to the said application, Notice dated 11.08.2021 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 19.11.2021. 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 followings reason(s).”* Said order is entirely blank and does not give any particulars or details thereafter.

8. Thereafter, impugned Show Cause Notice dated 03.02.2022 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”*.



9. Said Show Cause Notice required the petitioner to appear on 04.03.2022 at 11:00 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 (4).*”

10. 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.

11. Thereafter, impugned order dated 18.08.2022 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 05.03.2022 in response to the notice to show cause dated 02.02.2022*” 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 01.07.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be



cancelled retrospectively.

12. 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.

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

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 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.

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 18.08.2022 is modified to the limited extent that registration shall now be treated as cancelled with effect from 23.04.2021 i.e., the date when 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. 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.

21. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

MAY 28, 2024
'rs'

TUSHAR RAO GEDELA, J