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

% ***Date of Decision: 31.07.2024***

\+ W.P.(C) 10485/2024 CM APPL. 43104/2024

VARUN KUMAR ARYA LEGAL HEIR OF NARESH KUMAR PROPRIETOR OF DICKON SALES .....Petitioner

Through: Mr. Rajesh Mahna, Mr. Ramanand Roy, Mr. Mayank Kouts, Mr. Shiva Narang and Ms. Silky Wadhwa, Advs.

versus

COMMISSIONER OF DELHI GOODS AND SERVICE TAX & ANR. .....Respondents

Through: Mr. Rajeev Aggarwal, ASC and Mr. Shubham Goel, Adv.
Mr. Varun Sachdeva and Mr. Manish, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

VIBHU BAKHRU, J. (ORAL)

1. Issue notice.

2. Learned counsel for the respondents accept notice.

3. The petitioner is the legal heir of Late Sh. Naresh Kumar, who was carrying on the business under his sole proprietorship concern named M/s Dickon Sales.

4. The petitioner's father was registered with the Goods and Services

Tax authorities with effect from 05.04.2018 and was assigned the Goods and Service Tax Identification Number (GSTIN):07AAEPA04841ZD.

5. The petitioner states that his father expired on 07.08.2020 and since then none of the legal heirs of the petitioner's deceased father have carried on the business and therefore, regular returns were not filed.

6. In view of the above, the proper officer issued a Show Cause Notice dated 09.11.2020 (hereafter *the SCN*) in the name of the petitioner's father calling upon him to show cause why his GST registration should not be cancelled. Since the petitioner's father had expired, the SCN (which was issued in the name of the petitioner's deceased father) could not be responded to.

7. Mr. Mahna, learned counsel appearing for the petitioner also submits that none of the legal heirs had examined the GST portal and, therefore, were unaware of the SCN.

8. Since no response was received to the SCN, the proper officer passed an order dated 23.12.2021 (hereafter *the impugned order*) cancelling the petitioner's deceased father's GST registration with retrospective effect from 05.04.2018 (being the date on which the said registration was granted).

9. The petitioner is essentially aggrieved as a number of persons to whom the petitioner's father had supplied goods, are approaching the petitioner on account of the Input Tax Credit (ITC) being denied to them. This is a result of the retrospective cancellation of the GST registration of the petitioner's deceased father.

10. The SCN, pursuant to which the impugned order was passed, proposed cancellation of the GST registration of the tax payer on the ground that he had not filed returns for a continuous period of six months. The SCN

did not specifically set out any grounds for cancellation of the GST registration with retrospective effect or suggested that any such action would be taken against the tax payer. The impugned order also does not set out any specific reason for cancellation of the deceased tax payer's GST registration *ab initio*.

11. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*), the proper officer is empowered to cancel the tax payer's GST registration including with retrospective effect, as he deems fit on the grounds as set out in the said sub-section. However, the exercise of cancelling the GST registration with retrospective effect is required to be informed by reason. Such action cannot be taken whimsically or arbitrarily. The proper officer must have good reasons to cancel the GST registration with retrospective effect.

12. In the present case, the only ground on which the tax payer's GST registration was sought to be cancelled was failure to file the returns for a continuous period of six months. Plainly, absent anything more, the cancellation of the tax payer's GST registration for the period during which the GST returns were filed, is not warranted.

13. In the given facts of this case, we consider it apposite to direct that the impugned order would be operative from the date on which the petitioner's father expired, that is from 07.08.2020, and not with effect from 05.04.2018.

14. The impugned order stands modified to the aforesaid extent.

15. We, however, clarify that this would not preclude the respondent authorities from initiating any proceedings for recovery of tax or dues, if any, that may be due for the period prior to the demise of the petitioner's father, in accordance with law.

16. The present petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 31, 2024/cl