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

\+ W.P.(C) 13423/2024 & CM APPL. 56115/2024 – STAY

BANI ENTERPRISES .....Petitioner

Through: Mr. Jitin Singhal, Mr. Pravesh Bahuguna,, Advocates.

versus

COMMISSIONER OF CGST, DELHI NORTH & ORS. .....Respondents

Through: Mr. Atul Tripathi, SSC and Mr. V.K.Attri, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **18.11.2024**

1. Although we had placed the respondents on notice and had also required them to file a reply, no counter affidavit has been filed till date. Bearing in mind the disclosures which are made, we find that there would be no justification to continue the writ petition on our board in light of the facts which are noticed hereinafter.

2. The petitioner is essentially aggrieved by the orders dated 29 December 2022 and 20 February 2024, which have been affirmed by the Appellate Authority vide its order of 08 July 2024. In terms of these orders the **Goods and Services Tax**[1] registration of the petitioner was cancelled and its application seeking revocation of that order has also been dismissed.

3. From the facts which appear on the writ petition, it would emerge that the petitioner was originally registered on 17 December 2014 in the category of a wholesaler/ distributor of mobile phones.

[1] GST

The said registration under the Delhi Value Added Tax Act, 2004 thereafter migrated under the provisions of the **Central Goods and Services Tax Act, 2017**[2] and in terms whereof a registration certificate under the said statute came to be issued on 01 July 2017. The petitioner is stated to have shifted its principal place of business and applied for requisite amendments being made in the registration certificate. That amendment was carried out and an amended registration certificate issued on 02 July 2019.

4. On the record is also a panchnama drawn by the **Directorate General of Goods and Services Tax Intelligence**[3], pertaining to a search which was undertaken on the business premises of the petitioner. The location of the business premises which was subjected to search corresponds with the particulars which appear in the amended registration certificate.

5. However, the respondents proceeded to issue a **Show Cause Notice**[4] on 13 June 2022 alleging that the registration was liable to be cancelled since it had been obtained by means of "*fraud, willful misstatement or suppression of facts*". This was followed by a final order of cancellation dated 29 December 2022 and in which the respondents held as follows: -

> "This has reference to your reply dated 22/06/2022 in response to the notice to show cause dated 13/06/2022
>
> Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s).
>
> I. Neither attended PH nor responded to the SCN issued on 13.06.2022. Hence, cancelled.

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[2] Act
[3] DGGI
[4] SCN

The effective date of cancellation of your registration is 03/07/2017

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and basis thereof is as follows:

The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

Head	Central Tax	State Tax/ UT Tax	Integrated Tax	Cess
Tax	0	0	0	0
Interest	0	0	0	0
Penalty	0	0	0	0
Others	0	0	0	0
Total	0.0	0.0	0.0	0.0

6. As is evident from the aforesaid extract, not only was the registration cancelled, but the said cancellation was also made effective from a retrospective date of 03 July 2017. Aggrieved by the aforesaid, the petitioner submitted an application seeking revocation.

7. While considering the application for revocation, the respondents issued a notice on 20 January 2023 which reads as follows:-

"This has reference to your application dated 19/01/2023 regarding revocation of cancellation of registration. Your application has been examined and the same is liable to be rejected for the following reasons:

1. Reason for revocation of cancellation - Others (Please specify) - You were found non existent during as letter C. No. IV(Hqrs.Prev)GST-N/ 12/2589/2022/6415 dated 03.06.2022 from DC. Anti-Evasion. You are requested to clarify why your application for revocation should not be rejected.

You are hereby directed to furnish a reply to the notice within seven working day from the date of service of this notice.

> You are hereby directed to appear before the undersigned on 27/01/2023 at 12:30
>
> If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits."

8. The aforesaid SCN was thereafter followed by a final order dated 20 February 2024 in terms of which the application of the petitioner for revocation came to be rejected.

9. As is manifest from the aforesaid communications which were issued by the State GST authorities, the original SCN had proceeded on the allegation that the registration had been obtained by means of fraud and was thus liable to be cancelled. However, that notice failed to advert to or found itself upon any cogent material on the basis of which the respondents came to form the opinion that the registration itself had been obtained by practice of fraud or by the making of a willful misstatement or suppression of facts.

10. More importantly, the Court notes that the said SCN had failed to allude to the amended registration certificate which had come to be obtained by the petitioner in the meanwhile and had been issued on 02 July 2019. That development has clearly not been borne in consideration. We had an occasion to note in the preceding parts of this order that it was these very premises which had also been searched by the authorities working under the DGGI. The respondents, in terms of a notice of 20 January 2023, however, allude to an inspection report submitted by the Deputy Commissioner, Anti-Evasion dated 03 June 2022. It is the conceded case before us that a copy of the said communication was neither provided to the writ petitioner nor was it ever confronted with the same. It is this material

which appears to have formed the basis for the passing of the order of 20 February 2024 rejecting the application for revocation.

11. The appellate authority has, while examining the contentions which were addressed on the appeal which came to be preferred, has observed as follows:-

> "**4.** I have carefully gone through all the documents available on record and various submissions made by the appellant. Firstly, I will examine whether the instant appeal has been filed within prescribed time limit. I note that Sub Section (1) of Section 107 of CGST Act, 2017 prescribes the period of filing an appeal as under:
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> > *"Section 107 {1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Service Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.*
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> **4.1** I find that the instant appeal has been filed against Order-In-Original No. ZA070224114050D dated 20.02.2024. Therefore, in terms of section 107(2), the last date of filing the instant appeal was 19.05.2024 which has actually been filed online on 27.02.2024. Therefore, I hold that the instant appeal is not hit by limitation.
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> **5.** I find that the adjudicating authority has rejected the appellant's application for revocation of cancellation of GST registration *primarily* due to the reason that the appellant's firm was found non-existent and nonfunctional at the registered address during physical verification conducted by range office.
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> **6.** In this connection, I find that the appellant in its grounds of appeal has stated that the application of revocation for cancellation was filed by the appellant in the month of January-2023, which was rejected by the department after the period of one year. The appellant further stated that their registration was cancelled in December-2022, thus, they have to vacate the premises due to discontinuation of business. From the records placed before me, *wherein* I note that the appellant itself stated that they are not existent at the registered principal place of business. However, the appellant filed an application for revocation of cancellation on 19.01.2023 and wants to continue its business activities at the registered principal place of business. However, on the other side, the appellant has failed to submit necessary documentary evidence

such as self-attested copy of Aadhar Card, PAN card of the owner of the premises, geo-tagged photo of premises, relevant rent-agreement and electricity bill of the relevant period along with the NOC from the owner of the premises etc., before the appellate authority, *in* order to substantiate their existence at the registered premises.

Furthermore, on perusal of SCN dated 13.06.2022, *wherein* it was alleged that the registration has been obtained by the appellant is by means of fraud, willful misstatement or suppression of facts and based on which the registration of the appellant was cancelled vide order dated 29.12.2022. In this regard, I find that the appellant in its ground of appeal has stated that the department has not provided any particulars as regards to the alleged fraud committed by the petitioner. However, I find that the appellant has not submitted any documentary evidence in order to prove genuineness of business transactions made by the appellant during the relevant period. A mere submission of facts without evidencing the same cannot be considered at face value.

7. Therefore, from the foregoing facts and findings *wherein* I observe that the appellant has failed to submit relevant documents to prove genuineness of transaction made by the appellant during the relevant period **and has also** not submitted necessary documentary evidences to substantiate their existence at the registered premises, before the appellate authority. Hence, I am of the considered view that the registration of the appellant is liable to be remain cancelled. Therefore, I do not find any reason to interfere with the said impugned order passed by the adjudicating authority as the same is legal End maintainable in law.

Accordingly, I pass the following order:

8. The appeal filed by M/s Bani Enterprises (Vijay Kumar Sharma), Shop No. 212, Property Bearing No. 2853/17, Network Plaza Beadon Pura, Karol Bagh, Delhi-110005 against Order-In-Original No. ZA07022411405QD dated 20.02.2024 is hereby rejected on the grounds as discussed *supra* and disposed of in terms of Section 107(12) of CGST Act, 2017."

12. We find ourselves unable to sustain the stand as taken since even the appellate authority has failed to advert to the developments which had occurred in the interregnum and which included the registration certificate itself coming to be amended. More importantly,

we find that although it was alleged that the registration was liable to be cancelled on the ground of fraud, willful misstatement or suppression of facts, none of the authorities, including the appellate authority, have rested their opinion on any material which may have even remotely indicated that the registration certificate when originally obtained was the outcome of the practice of fraud, willful misstatement or suppression of facts.

13. Insofar as retrospective cancellation is concerned, the same stands duly answered by us in our decision in **Riddhi Siddhi Enterprises vs. Commissioner of Goods and Services Tax (CGST), South Delhi & Anr**[5] and where we had held as follows:-

> "**5.** As is manifest from a reading of Section 29, clauses (a) to (e) of Section 29(2) constitute independent limbs on the basis of which a registration may warrant cancellation. While the provision does enable the respondents to cancel that registration with retrospective effect, the mere existence or conferral of that power would not justify a revocation of registration. The order under Section 29(2) must itself reflect the reasons which may have weighed upon the respondents to cancel registration with retrospective effect. Given the deleterious consequences which would ensue and accompany a retroactive cancellation makes it all the more vital that the order be reasoned and demonstrative of due application of mind. It is also necessary to observe that the mere existence of such a power would not in itself be sufficient to sustain its invocation. What we seek to emphasise is that the power to cancel retrospectively can neither be robotic nor routinely applied unless circumstances so warrant. When tested on the aforesaid precepts it becomes ex facie evident that the impugned order of cancellation cannot be sustained.
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> **6.** We note that while dealing with the right of the respondents to cancel GST registration with retrospective effect and the manner in which such power should be exercised in accordance with the statutory scheme was an issue which was noticed in **Ramesh Chander vs Assistant Commissioner of Goods and Services Tax, Dwarka Division, CGST Delhi & Anr.**[4] The Court in Ramesh Chander taking note of the contours of Section 29 had held:-
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> > "1. The petitioner impugns order in appeal dated 29.12.2023,

[5] W.P.C 8061/2024 dated 25 September 2024.

whereby the appeal filed by the petitioner has been dismissed solely on the ground of limitation. Petitioner had filed the appeal impugning order dated 13.07.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 07.04.2022.

2. Vide impugned Show Cause Notice dated 07.04.2022, petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-

> "Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months"

3. Petitioner was in the business of services involving repair, alterations, additions, replacements, renovation, maintenance or remodelling of the building covered above, General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks, General construction services of long-distance underground/ overland/ submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works, General construction services of local water & sewage pipelines, electricity and communication cables & related works, Installation, assembly and erection services of other prefabricated structures and constructions and possessed a GST registration.

4. A show cause notice was issued to the petitioner on 07.04.2022 Though the notice does not specify any cogent reason, there is an observation in the notice stating failure to furnish returns for a continuous period of six months. The show cause notice requires the petitioner to appear before the undersigned i.e. authority issuing the notice. Notice does not give the name of the officer or place or time where the petitioner has to appear.

5. Further the order dated 13.07.2022 passed on the show cause notice does not give any reasons for cancellation of the registration. It, however, 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 16.04.2022 in response to the notice to show cause dated 07.04.2022" 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. retrospective date.

6. Neither the show cause notice, nor the order spell out the

reasons for retrospective cancellation. In fact, in our view, order dated 13.07.2022 does not qualify as an order of cancellation of registration.

7. As per the petitioner, the said order reflected that the GST of the Petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the Petitioner.

8. We notice that the show cause notice as well as the impugned order of cancellation, are themselves vitiated on account of lack of reason and clarity. The appeal has been dismissed solely on the ground of limitation. Since the very foundation of entire proceedings i.e. show cause notice and the order of cancellation are vitiated, we are of the view that no purpose would be served in relegating the petitioner to the stage of an appeal.

9. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, 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. The 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.

10. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer'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 in this regard is correct, it would follow that the proper officer is also 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.

11. The show cause notice does not even state that the registration is liable to be cancelled from a retrospective date.

12. The petition is allowed. The impugned show cause notice dated 07.04.2022, order of cancellation dated 13.07.2022 and the order in appeal dated 29.12.2023 are accordingly set aside. GST registration of the petitioner is restored, subject to

petitioner filing requisite returns upto date.

13. It is clarified that since the petitioner could not have filed the return after the GST registration was suspended, there shall be no liability to pay any penalty or fine for delayed filing. However, this would only apply in case petitioner files an affidavit of undertaking that petitioner has not carried out any business or raised invoices or taken any Input Tax Credit after the registration was suspended with effect from 07.04.2022 i.e., the date of suspension of the registration.

14. Respondent would be at liberty to initiate appropriate proceedings in accordance with law after giving a proper show cause notice containing complete details, if so advised. Further this order would not preclude the respondent from initiating any steps in accordance with law, if it is found that the petitioner had violated any provisions of the Act.

15. Petition is disposed of in the above terms."

7. We further take note of the judgment in **Delhi Polymers vs Commissioner, Trade and Taxes & Anr.**[5] wherein the following was observed:-

"1.Petitioner has filed the appeal impugning order of cancellation of registration dated 15.12.2021 whereby the GST registration of the Petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 04.09.2021.

2. Vide Show Cause Notice dated 04.09.2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

> "Collects any amount representing the tax but fails to pay the same to the account of the Central/State Government beyond a period of three months from the date on which such payment becomes due"

3. Petitioner was engaged in the business of Sanitary ware Products & Accessories i.e., Baths, Shower, Washbasins, Seats and Cover etc. and possessed GST registration.

4. Show Cause Notice dated 04.09.2021 was issued to the Petitioner seeking to cancel its registration. However, the 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.

5. Further, the impugned order dated 15.12.2021 passed on the Show Cause Notice dated 04.09.2021 does not give any reasons for cancellation. It, however, states that the registration

is liable to be cancelled for the following reason "whereas no reply to the show cause notice has been submitted". However, the said order in itself is contradictory. The order states "reference to your reply dated 15.12.2021 in response to the notice to show cause dated 04.09.2021" and the reason stated for the cancellation is "whereas no reply to notice 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.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 15.12.2021 does not qualify as an order of cancellation of registration. On one hand, it 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.

7. Learned Counsel for the Petitioner submits that the said order reflected that the GST registration of petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the Petitioner.

8. He further submits that the petitioner is no longer interested in continuing the business and the business has been discontinued.

9. 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.

10. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer'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 in 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.

11. It may be further noted that both the Petitioners and the department want cancellation of the GST registration of the Petitioner, though for a different reason.

12. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 15.12.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 04.09.2021 i.e., the date when the Show Cause Notice was issued.

13. It is clarified that Respondents are also 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.

14. Petition is accordingly disposed of in the above terms."

8. In view of the aforesaid and in light of an abject failure on the part of the authority to assign even rudimentary reasons for a retroactive cancellation, we find ourselves unable to sustain the order impugned."

Accordingly, and for all the aforesaid reasons, we find ourselves unable to sustain the impugned orders.

14. The writ petition is accordingly allowed. The impugned orders dated 29 December 2022, 20 February 2024, as well as the order of the appellate authority dated 08 July 2024 are hereby quashed.

15. This order, however, shall be without prejudice to the rights of the respondents to draw proceeding afresh and in accordance with law.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 18, 2024/*neha*