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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 15948/2024**

ELLISS COLLECTIONS

.....Petitioner

Through: **Mr. Vineet Bhatia and Mr.
Suresh Aggarwal, Advs.**

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: **Mr. Kshitij Chhabra, SPC for
UOI/R-1.
Mr. Harpreet Singh, SSC along
with Ms. Suhani Mathur and
Mr. Shivang Chawla, Advs. for
R-2.
Mr. Rajeev Aggarwal, ASC.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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19.11.2024

1. This writ petition has been preferred seeking the following reliefs:-

“a) Issue writ in the nature of mandamus or any other appropriate writ, order or direction to the Respondents to cancel the Registration Certificate of the Petitioner w.e.f. 30th April 2022.

b) Issue a writ of mandamus or any other writ, order or direction of like nature, setting aside the Impugned Notice seeking additional information/clarification/documents relating to application for cancellation issued in FORM GST REG 03 dated 26.04.2020.

c) Issue a writ of mandamus or any other writ, order or direction of like nature, setting aside the Order dated 05.11.2021 for Cancellation of Registration.

d) Issue a writ of mandamus or any other writ, order or direction of like nature, setting aside the Show Cause Notice for Cancellation of Registration dated 18.08.2021.

e) Issue a writ of mandamus or any other writ, order or direction of like nature to the respondents, directing to amend the date of cancellation of registration certificate to 30.04.2022.

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f) Issue a writ thereby declaring FORM GST REG-03 and FORM GST REG-05 as ultra vires the CGST Act and the CGST Rules and direct the respondents to accordingly amend the said statutory forms.

g) Pass such further and other orders, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.”

2. The petitioner is principally aggrieved by the order of 05 November 2021 in terms of which its Goods and Services Tax registration has come to be cancelled by the respondents with retrospective effect from 01 July 2017.

3. From the records we gather that the petitioner being desirous of closing down its business had applied for cancellation voluntarily in terms of an application made on 06 April 2020. During the pendency of that application, the respondents proceeded to issue a **Show Cause Notice**¹ dated 18 August 2021 which reads thus:-

“Form GST REG-17/31

[See Rule 22(1)/ sub-rule (2A) of rule 21A]

Reference Number: ZA0708210908738 **Date:** 18/08/2021

To
Registration Number (GSTIN/Unique ID): 07AAEFE5854G1ZE
ELLISS COLLECTIONS
116,1st FLOOR,SANDESH VIHAR, PITAMPURA, North West
Delhi,Delhi,110034

Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1 Non compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed

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

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

¹ SCN



will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 18/08/2021.

Place: Delhi

Date: 18/08/2021

Rajeev Kumar
Sales Tax Officer Class II / AVATO
Ward 64:Zone 4:Delhi"

It is this SCN which has ultimately culminated in the passing of the impugned order dated 05 November 2021.

4. As is ex facie apparent from the reading of the SCN, the same is devoid of any material particulars or reasons which may have weighed upon the respondents to come to conclude that the petitioner had violated the provisions of the **Central Goods and Services Tax Act, 2017²**.

5. In fact, all that it is alleged is that the petitioner had not complied with "any specified provisions in the GST Act or the Rules". While passing the final order of cancellation on 05 November 2021, the position has remained unchanged.

6. Quite apart from the above, we also find ourselves unable to sustain the retrospective cancellation which has come to be made in terms of the order impugned. Insofar as retrospective cancellation is concerned, we bear in mind the principles laid down in **Riddhi Siddhi Enterprises vs. Commissioner of Goods and Services Tax (CGST), South Delhi & Anr³** 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

² Act

³ W.P.C 8061/2024 dated 25 September 2024

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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.

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:-

“1. The petitioner impugns order in appeal dated 29.12.2023, 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 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.

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.”

7. We further note that the respondents ultimately disposed of the application of the petitioner for cancellation dated 06 April 2020 by



passing a rejection order dated 13 January 2022. The said order reads as follows:-

“Form GST REG-05

[See Rule 9(4)]

Reference Number: ZA070122048910W **Date:** 13/01/2022

To
ELLISS COLLECTIONS
1st FLOOR, 116, PITAMPURA, SANDESH VIHAR,
North West Delhi, Delhi, 110034
GSTIN (If available)- 07AAEFE5854G1ZE

Order of Rejection of Application for Cancellation

This has reference to your reply filed vide ARN AA070420001925N dated 06/04/2020. The reply has been examined and the same has not been found to be satisfactory for the following reasons:

Therefore, your application is rejected in accordance with the provisions of the Act”

As would be evident from a reading of the said order, the same is wholly unreasoned. We accordingly, find ourselves unable to sustain the action of the respondents.

8. The writ petition is consequently allowed. The orders dated 05 November 2021 as well as 13 January 2022 are hereby quashed and set aside. The application of the writ petitioner seeking cancellation shall stand revived for consideration afresh.

9. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 19, 2024/RW

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