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

\+ W.P.(C) 244/2025

YD ENTERPRISES THROUGH ITS PROPRIETOR HUNEY KHANEJA .....Petitioner

Through: Mr. Antik Majumder, Adv.

versus

COMMISSIONER OF CENTRAL TAX & ORS. .....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Ankit Kumar, Adv.
Mr. Abhishek Khanna, SPC with Mr. Ashish Khanna, Adv. for R-4.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% **10.01.2025**

CM APPL. 1162/2025 (Ex.)

Allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 244/2025

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

> "a. Issue a Writ of Certiorari or a Writ of Mandamus and/or such other Writ, Order or direction to set aside Order-In-AppealNo.397/ADC/Central Tax/Appeal-I/DeIhi/2024 dated 04.10.2024 passed without considering the fact that the original Show Cause Notice for Cancellation ofRegistration dated 02.02.2023 and subsequent OrderCancelling the Registration dated 23.02.2024 were completely arbitrary and non-speaking and provide

no reasons or basis for retrospective cancellation of registration which is contrary to and in violation of section 29(2) of the CGST Act, 2017 and settled judicial precedents.

b. Issue a Writ of Certiorari or a Writ of Mandamus and/or such other Writ, Order or Direction to set aside Order-In-Appeal No.397/ADC/Central Tax/Appeal-I/Delhi/2024 dated 04.10.2024 passed without considering the fact that the order of rejection of application for revocation of cancellation was issued without any opportunity of hearing in violation of mandate of the proviso to section 30 of the CGSTAct, 2017 and principles of natural justice on the soleground that the petitioner has not replied to show causenotice dated 26.04.2024 within the time specified in thenotice.

c. A Writ of Certiorari or a Writ of Mandamus and/or suchother Writ, Order or direction to set aside Order of Rejectionof Application for Revocation of Cancellation dated14.05.2024 and the original Order for Cancellation ofRegistration dated 23.02.2024 alongwith the Show CauseNotice for cancellation of registration dated 02.02.2023 forbeing in violation of Section 29(2) of the Central Goods andServices Tax Act, 2017, arbitrary; non-speaking andcontrary to settled judicial precedents."

d. Pass any other and / or such further order(s) as this Hon'bleCourt may deem fit, proper and expedient an in the interest of justice."

2. From the facts as they emerge from the record, we gather that the proceedings against the petitioner for cancellation of registration commenced pursuant to the issuance of a **Show Cause Notice**[1] which assigned the following reason:

"*Letter return undelivered*."

3. The aforesaid SCN ultimately terminated in the passing of a final order of cancellation dated 23 February 2024. It further becomes pertinent to note that the registration in terms of this order was cancelled with retrospective effect from 03 August 2017.

4. Aggrieved by the aforesaid, the petitioner applied for revocation on 09 April 2024. The respondents appear to have sought for further documentation in connection with that application. However, the said

[1]SCN

application too met an identical fate in terms of the final order dated 14 May 2024and which reads thus:

"**Form GST REG-05**
[See Rule 9(4)]

Reference Number: ZA070524080063R **Date:** 14/05/2024

To

HUNEY KHANEJA
FIRST FLOOR, 6787, PLOT NO-22, DEV NAGAR, KAROL BAGH, BLOCK NO-10, GALI NO-3, North Delhi, Delhi, 110005
GSTIN (if available): 07AHMPH0185N2ZY

Order of Rejection of Application for Revocation of Cancellation

You have not replied to the notice issued vide reference no. ZA0704241249410 dated 26/04/2024 within the time specifiedtherein. Therefore, your application is hereby rejected in accordance with the provisions of the Act.

Tanvi Soni
Assistant Commissioner
Ward 45

5. As is manifest from the original order of cancellation of registration as well as the order in terms of which the application for revocation has come to be rejected, the respondentshave failed to assign any valid reason justifying the action of cancellation. The orders are thus liable to be quashed and set aside on this short score alone.

6. Additionally, we note that the original order of cancelling the registration of writ petitioner was ordained to come into effect from a retrospective date of 03 August 2017. We bear in consideration the fact that the original SCN did not bear any intent to cancel the registration of the petitioner with retrospective effect.

7. In this regard, we bear in mind the following observations as

rendered in our decision in **Riddhi Siddhi Enterprises vs. Commissioner of Goods and Services Tax (CGST), South Delhi & Anr.**[2]**:**

> "**5.**<u>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.</u>
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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, 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:-
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> > > "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

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

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.
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> 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:-
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> > "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"
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> 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.
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> 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.
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> 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.
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> 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.
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> 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 impugned action.

8. Accordingly, the writ petition is allowed and the impugned SCN dated 02 February 2023, the order-in-appeal dated 04 October 2024, the original order for cancellation of registration dated 02 February 2023 as well as the order dated 14 May 2024 in terms of which the application for revocation has come to be rejected, are hereby quashed and set aside.

9. We leave it open to the respondents to draw proceedings afresh bearing in mind the observations made hereinabove.

YASHWANT VARMA, J

HARISH VAIDYANATHAN SHANKAR, J

JANUARY 10, 2025/*akc*