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

% Date of decision: 25.04.2024

W.P.(C) 5791/2024 & CM APPLs. 23959-60/2024

MUKESH KUMAR SINGH

..... Petitioner

versus

COMMISSIONER OF DELHI GST AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Vedant Chandel, Mr. Vikram Saini and Mr. Surinder Kaul Aberdar, Advocates.

For the Respondent:

Mr. Rajeev Aggarwal, ASC with Mr. Manohar Mittal, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 28.03.2024 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 04.05.2023 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017 and also impugns Show Cause Notice dated 18.08.2021.

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. Vide Show Cause Notice dated 18.08.2021, petitioner called upon to show 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”

4. Petitioner is engaged in the business of TMT Bars and possessed GST Registration under the Central Goods and Services Act, 2017 (hereinafter referred to as the Act).

5. Said Show Cause Notice dated 18.08.2021 was issued to the petitioner seeking to cancel its registration. Though the notice does not specify any cogent reason, it merely states *“Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months”*. The Show Cause Notice required the petitioner to appear before the undersigned i.e., authority issuing the notice. However, the said notice does not bear the date and time whereby the Petitioner was required to appear for personal hearing.

6. Further, the 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.

7. Thereafter, the impugned order dated 04.05.2023 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*”. Further, said order in itself is contradictory. The order states “*reference to your reply dated 04/05/2023 in response to the notice to show cause dated 18/08/2021*” 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.

8. It may be noted that on one hand, the order 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.

9. As per the Petitioner, he was not aware of the notice and orders cancelling GST registration of the Petitioner.

10. Learned counsel for Petitioner submits that Petitioner is no longer continuing business and the business activities of the Petitioner have been closed down. He further submits that Petitioner has filed all returns till August 2021.

11. We notice that the Show Cause Notice and the impugned order are also bereft of any details. Neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation. Accordingly, the same cannot be sustained.



12. 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.

13. 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.

14. It is clear that both the petitioner and the respondent want the GST registration to be cancelled, though for different reasons.



15. In view of the above and the fact that the Petitioner does not seek to carry on business or continue the registration, the impugned order dated is modified to the limited extent that registration shall now be treated as cancelled with effect from 18.08.2021 i.e., the date when Show Cause Notice was issued. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.

16. 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 show cause notice and an opportunity of hearing to the petitioner.

17. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 25, 2024/*vp*