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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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Date of decision: 03.04.2024

+ W.P.(C) 4860/2024

RAJAT KAPOOR

.... Petitioner

versus

COMMISSIONER, STATE TAX, GST, DELHI &
ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Mani Bhadra Jain & Mr. Abhyuday
Sharma, Advocates.

For the Respondents: Mr. Jatin Kumar Gaur, Advocate for Mr.
Harpreet Singh, SSC.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 14.02.2023 whereby the GST registration of the Petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 07.10.2022.

2. Vide Show Cause Notice dated 07.10.2022, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

“returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017”



3. Subject petition has been filed by Sh. Rajat Kapoor, legal heir of Late Sh. Dershan Kapoor, who was the proprietor of M/s Sarv Shakti Enterprises and was registered under the Goods and Service Act, 2017 (hereinafter referred to as 'the Act').

4. Show Cause Notice dated 07.10.2022 was issued to the Petitioner. Though the notice does not specify any cogent reason, it merely states "*returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017*" along with an observation stating "*failure to furnish returns for a continuous period of six months*". Said Show Cause Notice required the petitioner to appear on 06.11.2022 at 11:00 AM before the undersigned i.e. authority issuing the notice. However, the said Notice does not give the name of the officer or place where the petitioner has to appear. It merely mentions "*Jurisdiction Officer*".

5. Thereafter, the impugned order dated 14.02.2023 passed on the Show Cause Notice dated 07.10.2022 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 notice to show cause has been submitted*". However, the said order in itself is contradictory. The order states "*reference to your reply dated 07/11/2022 in response to the notice to show cause dated 07/10/2022*" 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., a retrospective date.



6. Further, the said 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.

7. Neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation. On the one hand, the order states that no reply filed and on the other hand refers to a reply dated 07.11.2022, which shows complete non-application of mind, particularly when the Proprietor had passed away and no reply was filed.

8. Further, it may be noted that in the column at the bottom there are no dues stated to be due against the petitioner and the table shows nil demand.

9. Learned counsel for Petitioner submits that Sh. Dershan Kapoor passed away on 18.11.2021 and the business was closed down and no business was carried out by the legal heirs in the name and style of the proprietorship concern of the deceased.

10. 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.

11. 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.

12. It may be further noted that both the Petitioner and the department want cancellation of the GST registration of the Petitioner, though for different reasons.

13. In view of the above facts that Petitioner does not seek to carry on business or continue with the registration, the impugned order dated 14.02.2023 is modified to the limited extent that registration shall now be treated as cancelled with effect from 18.11.2021 i.e., the date when Sh. Dershan Kapoor passed away. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.



14. 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 including retrospective cancellation of the GST registration.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 03, 2024/SK