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

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Date of decision: 09.02.2024

+ **W.P.(C) 1930/2024 & CM APPL. 8100/2024 (Exemption)**

GREEN WORK METAL

..... Petitioner

versus

PRINCIPAL COMMISSIONER OF GST & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Abhinav Garg, Mr. Pankaj, Mr. Ram Mohan Singh, Mr. Manwendra Gautam & Ms. Aadyaantya, Advocates.

For the Respondent:

Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks direction to respondent to cancel the GST registration of the petitioner with effect from 16.01.2021 and impugns order dated 08.02.2021 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 11.09.2017.



2. Vide Show Cause Notice dated 29.01.2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-

“Collects any amount as 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 the proprietor of Green Work Metal and was in business of trading goods like stranded wire, cable, plated bands, and similar copper articles without electrical insulation and was registered under Goods and Services Tax Act, 2017.

4. Petitioner had submitted an application seeking Cancellation of Registration Certificate on 16.01.2021 on ground of discontinuation of business.

5. Pursuant to the said application, notice was issued by the respondent on 18.01.2021 seeking additional information and documents relating to application for cancellation of registration.

6. Said application for cancellation was rejected vide order dated 27.01.2021. Though the order rejects it on the ground of an unsatisfactory reply, the order does not specify any specific cogent reason for the same.

7. It appears that the respondents are using a template for issuing said order without providing any particulars. There is no clarity as to



why the reply has been found to be unsatisfactory.

8. Thereafter, on 29.01.2021, Show Cause Notice was issued to petitioner on the ground that “collects any amount as 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”.

9. It may be noticed that the impugned order dated 08.02.2021 states that the registration is liable to be cancelled for the following reason “*whereas no reply to notice to show cause has been submitted*”. The order also seeks to cancel the registration with retrospective effect from 11.09.2017. However, there is no material on record to show as to why the registration is sought to be cancelled retrospectively.

10. The Show Cause Notice dated 29.01.2021 also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, petitioner had no opportunity to even object to the retrospective cancellation of the registration.

11. 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. 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.

12. 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.

13. Records clearly demonstrate that the Petitioner had submitted an application seeking cancellation of the GST registration on 16.01.2021 which was rejected and thereafter, vide order dated 08.02.2021, the registration of the petitioner has been cancelled retrospectively with effect from 11.09.2017.



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 facts and circumstances, the petition is allowed. The order of cancellation is modified to the extent that the same shall operate with effect from 16.01.2021, i.e., the date of the petitioner's application for cancellation of registration.

16. However, petitioner shall furnish all requisite details to the respondents as required to be submitted by the petitioner in respect of notice dated 18.01.2021 to enable the respondents to ascertain if any demand is liable to be raised against the petitioner.

17. 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 from the petitioner in accordance with law.

18. The petition is accordingly disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 09, 2024/sk