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

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Date of decision: 12.02.2024

+ **W.P.(C) 1262/2024**

KOXAN INDIA

..... Petitioner

versus

ASSTT. COMMISSIONER OF GST & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Prince Mohan Sinha & Mr. Dinesh Mohan Sinha,
Advocates.

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. Learned counsel for the petitioner submits that an application has been filed in the Registry placing on record the correct documents. However, the application is not on record. Copy of the application along with the documents are produced. The same is taken on record.



2. Since the petitioner merely seeks to place on record additional documents, the Registry need not list the application. The documents are taken into consideration.

3. Petitioner impugns order dated 24.03.2021, whereby GST registration of the petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 17.02.2021 wherein petitioner was called upon to show cause as to why the registration be not cancelled for the following reason: -

“Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months”.

4. Learned Counsel for petitioner submits that petitioner has filed the GST returns for the period ending 30.09.2020 and thereafter petitioner has not carried out any business and is not interested in conducting any business and wishes to close the business.

5. The impugned order of cancellation dated 24.03.2021 states that the registration is liable to be cancelled for the following reason *“Whereas no reply to notice to show cause has been submitted”*. It seeks to cancel the registration with retrospective effect from 01.07.2017. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.



6. Further, 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.

7. 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.

8. 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.

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

10. In view of the above facts and circumstances, the order of cancellation is modified to the extent that the same shall operate with effect from 30.09.2020, i.e., the period upto which the Petitioner has filed its GST returns.

11. It would be, however, open to the respondent to take further action in accordance with law. 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 12, 2024/sk