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

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Date of decision: 14.02.2024

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W.P.(C) 2154/2024 & CM APPL. 8940/2024

RAGHAV ARORA L/H OF
SH. GOPAL KISHAN ARORA

..... Petitioner

versus

GST OFFICER, WARD 78, DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Puneet Rai, Advocate.

For the Respondent: Appearance not given.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order in appeal dated 11.01.2024 whereby the appeal filed by the Petitioner has been dismissed solely on the ground of limitation. Petitioner filed the appeal impugning order of cancellation of registration dated 24.11.2020 whereby the GST registration of the Petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 14.08.2019.



2. Vide Show Cause Notice dated 14.08.2019, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

“As per the GSTI report, during the visit the firm was found non-functioning on dated 13.08.2019”

3. Subject petition has been filed by Sh. Raghav Arora, legal heir of Late Sh. Gopal Kishan Arora, who was the proprietor of M/s Hari Gopal Steel and was engaged in the business of tubes, pipes and hollo profiles of cast iron. He was registered under the Goods and Service Act, 2017 (hereinafter referred to as ‘the Act’) and claims to have been regularly filing GST returns and making GST payments in accordance with law.

4. As per the Petitioner, his father was diagnosed with Cerebral/Brain Atrophy and was unwell since November 2018. He further submitted that his father did not visit the business premises on a regular basis and did not make any sale after November 2018 due to his illness and expired on 09.03.2021.

5. Learned counsel for Petitioner submitted that Show Cause Notice was issued on 14.08.2019. Thereafter, Respondent no. 1 passed the order dated 24.11.2020 retrospectively cancelling the GST registration of the taxpayer after a gap of more than 15 months. It was further submitted that no demand had been raised by the said order however the Registration was cancelled retrospectively w.e.f from 01.07.2017.



6. He further submitted that the Petitioner does not intend to carry on business and the business has been discontinued immediately on the demise of the father of the Petitioner. He submits that he is aggrieved by the retrospective cancellation of the registration as the Input Tax Credit is being denied for the said period.

7. 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.

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 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.

9. We may also note that the Show Cause Notice did not put the noticee to notice that registration was liable to be cancelled retrospectively.

10. 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.

11. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 24.11.2020 is modified to the limited extent that registration shall now be treated as cancelled with effect from 14.08.2019 i.e., the date when the Show Cause Notice was issued.

12. 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.



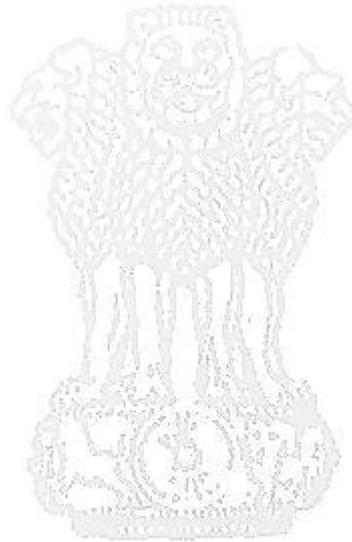
13. Petition is accordingly disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 14, 2024/vp

HIGH COURT OF DELHI



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