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

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Date of decision: 14.02.2024

+ **W.P.(C) 946/2024**

ADITI AGENCIES THROUGH ITS PROPRIETOR MR.

DIVYANSHU KHURANA

..... Petitioner

versus

COMMISSIONER OF CGST, DELHI & ORS. .... Respondents

**Advocates who appeared in this case:**

For the Petitioner: Appearance not given.

For the Respondent: Mr. Akshay Amritanshu, Senior Standing Counsel with Ms. Anjali Kumari, Mr. Samyak Jain and Mr. Ayush Raj, Advocates.

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

1. The petitioner impugns order in appeal dated 28.04.2023, whereby the appeal filed by the petitioner has been dismissed solely on the ground of limitation. Petitioner had filed the appeal impugning order dated 27.01.2021 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 20.12.2020, merely stating the reason "response not received". Petitioner also impugns Show Cause Notice dated 09.01.2021.



2. Vide impugned Show Cause Notice dated 09.01.2021, petitioner was called upon to show cause 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”*

3. The petitioner was in the business of trading and wholesale of medicines etc. and possessed a GST registration.

4. Further, the order dated 27.01.2022 passed on the Show Cause Notice does not give any reasons for cancellation of the registration. It, however, states that the registration is liable to be cancelled for the following reason *“Response not received”*. However, the said order in itself is contradictory. The order states *“reference to your reply dated 19.01.2021 to the show cause notice dated 09.01.2021”* and the reason stated for cancellation is *“Response not received”*. The order further states that effective date of cancellation of registration is 20.12.2020 i.e., a retrospective date.

5. Neither the show cause notice nor the order spell out the reasons for cancellation. In fact, in our view, order dated 27.01.2021 does not qualify as an order of cancellation of registration. On one hand, it 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.



6. Learned counsel for the petitioner submits that the petitioner had fallen seriously ill during the period and thus could not carry on the business or file his returns.

7. We notice that the Show Cause Notice as well as the impugned order of cancellation, are themselves vitiated on account of lack of reason and clarity. The appeal has been dismissed solely on the ground of limitation. Since the very foundation of entire proceedings i.e., Show Cause Notice and the order of cancellation are vitiated, we are of the view that no purpose would be served in relegating the petitioner to the stage of an appeal.

8. 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.

9. 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.

10. 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.

11. In view of the above facts and circumstances, the petition is allowed. The impugned show cause notice dated 09.01.2021, order of cancellation dated 27.01.2021 and the order in appeal dated 28.04.2023 are accordingly set aside. GST registration of the petitioner is restored, subject to petitioner filing requisite returns upto date.



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 from the petitioner in accordance with law.

**SANJEEV SACHDEVA, J**

**RAVINDER DUDEJA, J**

**FEBRUARY 14, 2024/vp**

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