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

% Date of decision: 16.02.2024

+ **W.P.(C) 2259/2024 & CM APPL. 9406/2024**

RANE BRAKE LINING LIMITED

..... Petitioner

versus

SUPERINTENDENT, RANGE-17, CENTRAL GST DIVISION
& ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Pulkit Verma & Mr. Peyush Pruthi, Advocates.

For the Respondent: Mr. Abhishek, Advocate.
Mr. Harpreet Singh, Senior Standing Counsel with Ms.
Suhani Mathur, Mr. Jatin Kumar Gaur & Mr. Gurpreet
Singh Gulati, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 09.01.2023 whereby the GST registration of the petitioner has been cancelled. Petitioner also impugns the order dated 16.01.2024 whereby the application of the petitioner seeking revocation has also been dismissed.



2. Issue notice. Notice is accepted by learned counsel appearing for the respondents. With the consent of the parties, this petition is taken up for final disposal.

3. Petitioner carries on the business of manufacturing of safety critical products for automobiles and locomotives across India and was registered under the Central Goods and Services Act, 2017.

4. As per the respondents, a Show Cause Notice was issued to the petitioner on 27.12.2022 seeking to cancel GST registration of the petitioner. The ground mentioned in the Show Cause Notice is “others”. As per the case of the petitioner, petitioner never received the Show Cause Notice and accordingly did not respond thereto.

5. Perusal of the Show Cause Notice shows that the Show Cause Notice requires the petitioner to appear before the undersigned i.e., the signatory of the notice. However, there is no name or designation of the officer mentioned who has issued the Show Cause Notice. The digital signatures on the Show Cause Notice also show “DS Goods and Services Tax Network 07”.

6. Thereafter, the impugned order dated 09.01.2023 has been passed cancelling the registration of the petitioner. The order refers to a reply of the petitioner dated 05.01.2023. As per the case of the



petitioner, petitioner never received the notice nor submitted any reply thereto. The order further cancels the registration on the ground that physical verification was conducted on 15.12.2022 and no such firm was found present at the registered office. The order further cancels the registration retrospectively w.e.f. 02.07.2017.

7. We note that the grounds for cancellation are different from the grounds in the Show Cause Notice. Petitioner was never intimated as to the real ground for cancellation. Cancellation order also suffers from infirmity in as much as the officer seems to have considered a reply of the petitioner when no such reply has been filed. Further, petitioner was never put to notice that the registration is liable to be cancelled retrospectively.

8. 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.

9. 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.

10. Petitioner thereafter filed an application seeking revocation. Pursuant to the application for seeking revocation, a Show Cause Notice dated 04.01.2024 was issued to the petitioner, seeking to reject the revocation application. Said Show Cause Notice also required the petitioner to appear once again before the undersigned i.e., the signatory of the notice, however, again, we notice that neither the name nor the designation of the officer issuing the notice was mentioned. The notice is digitally signed and endorsement on the digital signature is "DS Goods and Services Network-07".



11. Said Show Cause Notice is also defective. The Petitioner thereafter filed a reply on 08.01.2024 to the said Show Cause Notice. Pursuant to the Show Cause Notice, impugned the order dated 16.01.2024 has been passed which states that petitioner has not submitted a reply. Hence, the Show Cause Notice has been adjudicated and the revocation application rejected.

12. We may note that there appears to be complete non-application of mind. At the stage when petitioner did not submit a reply, the proper officer has recorded that reply of the petitioner has been considered and at the stage when the petitioner did submit a reply, the Proper Officer has recorded that no reply was filed.

13. In view of the various infirmities noticed hereinabove, we are of the view that both the Show Cause Notices dated 27.12.2022 and 04.01.2024 as also the impugned order dated 09.01.2023 cancelling the registration of the petitioner retrospectively, and order dated 16.01.2024 rejecting the revocation of cancellation application suffer from infirmity and cannot be sustained.

14. In view of the above, the Show Cause Notice dated 27.12.2022; the consequent order dated 09.01.2023; Show Cause Notice dated 04.01.2024 and the order dated 16.01.2024 are set aside. The GST registration of the petitioner is restored.



15. Petitioner shall comply with the provisions of Rule 23 and its provisos of The Goods and Services Tax Rules, 2017.

16. Petition is disposed of in the above terms.

17. 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 16, 2024/sk

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