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

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Date of decision: 21.02.2024

+ **W.P.(C) 1448/2024**

M/S SHREE BALAJI INDUSTRIES

..... Petitioner

versus

COMMISSIONER OF DGST AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Vineet Bhatia, Mr. Aamnaya J. Mishra,
Mr. Keshav Garg and Mr. Bipin Punia,
Advocates.

For the Respondents: Ms. Shaguftha, Advocate for Mr. Rajiv
Aggarwal, Senior Standing Counsel.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 27.12.2021 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 08.07.2017. Petitioner also impugns Show Cause Notice dated 31.08.2021.

2. Vide impugned Show Cause Notice dated 31.08.2023,



petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-

“Letter recvd. 802 dt27/07/2020 from JC(AE)Noida, wrong ITC availment from M/s Jagdamba Enterprises”

3. Petitioner was working in the name of M/s Shree Balaji Industries, at Khasra No. 628/469, 480, Sultanpur Mazra, North-West Delhi- 1100086 which is a partnership firm. Petitioner was engaged in business of manufacturing of labels, badges and similar articles of textile material and possessed GST registration.

4. Show cause notice dated 31.08.2021 was issued to the petitioner seeking cancellation of GST registration. The notice does not specify any cogent reason, and merely states *“Letter recvd. 802 dt27/07/2020 from JC(AE)Noida, wrong ITC availment from M/s Jagdamba Enterprises”*.

5. Further, the order dated 27.12.2021 passed on the show cause notice dated 31.08.2021 does not give any reasons for cancellation of the registration. It merely states *“whereas no reply to notice show cause has been submitted”*. However, the said order in itself is contradictory, the order states *“reference to your reply dated 06.10.2021 in response to the notice to show cause dated 31.08.2021”* and the reason stated for cancellation is *“whereas no reply to notice to show cause has been submitted”*. The order further states that effective date of cancellation of registration is 08.07.2017 i.e., a retrospective date.



6. Neither the show cause notice nor the order spell out the reasons for cancellation. In fact, in our view, order dated 27.12.2021 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 amounts stated to be due against the petitioner and the table shows nil demand.

7. The Show Cause Notice did 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.

8. Show Cause Notice dated 31.08.2021 records that wrongful Input Tax Credit [“ITC”] was availed from M/S Jagdamba Enterprises, however, as per the petitioner, he did not have any dealing with M/S Jagdamba Enterprises and no ITC has been availed *qua* the said entity.

9. Further, it may be noticed that the show cause notice directed the petitioner to appear for personal hearing on an appointed date and time whereas no date and time was mentioned in the said show cause notice.

10. As per the petitioner he could not file reply to the said show cause notice. However, the impugned order dated 27.12.2021 refers to a reply dated 06.10.2021 allegedly submitted by the petitioner and in



the next line states that no reply to the notice has been filed by the petitioner and thereafter cancels the registration retrospectively with effect from 08.07.2017.

11. We notice that the show cause notice and the impugned order are also bereft of any details accordingly the same cannot be sustained.

12. 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.

13. 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.

14. Further, there is no reasoning in the said show cause notice and in the impugned order as to why the cancellation has been done retrospectively.

15. In view of the above, petition is allowed. The impugned show cause notice dated 31.08.2021, order of cancellation dated 27.12.2021 are accordingly set aside. The GST registration of the petitioner is restored. Petitioner shall comply with Rule 23 of the Central Goods and Service Tax Rules, 2017.

16. It is clarified that respondents are at liberty to take further action in accordance with law and are not precluded from taking any steps for recovery of any tax, penalty or interest that may be due from the petitioner.

17. Petition is disposed of in above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 21, 2024/vp