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

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Date of decision: 26.02.2024

+ **W.P.(C) 2823/2024**

SHIBENDRA NARAYAN GUHA

..... Petitioner

versus

COMMISSIONER OF GST &
ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Prince Mohan Sinha, Mr. Dinesh Mohan Sinha and Mr. Maneesh Jain, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order of cancellation of registration dated 11.11.2022 whereby the GST registration of the Petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 07.10.2022.



2. Vide Show Cause Notice dated 07.10.2022, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

“Returns furnished by you under Section 39 of the Central Goods and Services Tax Act,2017”

3. Petitioner was engaged in business of trading of V-Belt (Motor Parts) and possessed GST registration.

4. Show cause notice dated 07.10.2022 was issued to the petitioner. Though the notice does not specify any cogent reason, there is an observation in the notice stating “failure to furnish returns for a continuous period of six months”. Further, the said show cause notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, petitioner had no opportunity to even object to the retrospective cancellation of the registration.

5. Further, the impugned order dated 11.11.2022 passed on the Show Cause Notice dated 07.10.2022 does not give any reasons for cancellation. It, however, states that the registration is liable to be cancelled for the following reason “*whereas no reply to the show cause notice has been submitted*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 07.11.2022 in response to the notice to show cause dated 07.10.2022*” and the reason stated for the cancellation is “*whereas no reply to*



notice show cause has been submitted’. The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date.

6. In fact, in our view, order dated 11.11.2022 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.

7. Learned Counsel for the Petitioner submits that petitioner is no longer interested in continuing the business and has closed down his business activities because of his ill health & old age.

8. The show cause notice and the impugned order are also bereft of any details accordingly the same cannot be sustained. Further, neither the show cause notice, nor the order spell out the reasons for retrospective cancellation.

9. 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.

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 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.

11. 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.

12. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 11.11.2022 is modified to the limited extent that registration shall now be treated as cancelled with effect from 07.10.2022 i.e., the date when the Show Cause Notice was issued. Petitioner shall comply with the requirements of Section 29 of the Central Goods and Services Tax



Act, 2017.

13. 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 including retrospective cancellation.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 26, 2024/vp