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

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Date of decision: 27.02.2024

+ **W.P.(C) 1199/2024**

HIMANSHU GOYAL PROPRIETOR OF M/S RAJ AND
CO

..... Petitioner

versus

PRINCIPAL COMMISSIONER STATE GST. DELHI
AND ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Santanu Kanungo & Mr. Himanshu
Goel, 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 dated 12.10.2022, whereby, the GST Registration of the Petitioner has been cancelled with effect from 08.06.2018 i.e. retrospective date.



2. Petitioner was in the business of trading of household edible items and had obtained the GST Registration.

3. As per the petitioner, petitioner closed his business in June 2022. Subject Show Cause Notice dated 18.07.2022 was issued on the ground that the petitioner had not filed the returns. Petitioner was called upon to file a reply and appear for personal hearing on the appointed date and time.

4. Show Cause Notice shows that there was no date, time or venue mentioned where the petitioner had to appear pursuant to the Show Cause Notice. The Show Cause Notice does not even bear the name and designation of the Officer issuing the Show Cause Notice and merely bears the digital signature signed by D.S. Goods & Services Tax Network (4).

5. The impugned order cancelling the registration dated 12.10.2022 begins with a reference to a reply dated 27.07.2022 and then states that no reply to notice to show cause has been submitted and the effective date of cancellation is 08.06.2018. The notice thereafter records that the petitioner has to pay the amounts mentioned in the notice on or before 22.10.2022. However, the amounts mentioned are 0.0 i.e. Nil.



6. 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. 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.

7. 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.



8. Further, Show Cause Notice dated 18.07.2022 and order dated 12.10.2022 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.

9. Clearly, the impugned notice and impugned order are bereft of any detail and are thus not sustainable. However, in the instant case, the case of the petitioner is that petitioner has himself shut the business since June 2022 and is no longer interested in the restoration of the GST registration.

10. Both the petitioner as well as the respondent want cancellation of GST registration, however, for different reasons. Accordingly, the impugned order dated 12.10.2022 is modified to the effect that the cancellation of registration shall be effective from 18.07.2022 i.e. the date of the Show Cause Notice on which date the registration was also suspended.

11. The petitioner shall however comply with the provisions of Section 29 of the Central Goods & Service Tax Act, 2017 and file all necessary details as mandated by the Act.



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 including retrospective cancellation.

13. Petition is disposed of.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 27, 2024

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