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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 16.04.2024

+ **W.P.(C) 5402/2024**

ANSH TELECOM THROUGH ITS PROPRIETOR SARITA RANI
..... Petitioner

Versus

COMMISSIONER OF DGST AND ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Vineet Bhatia and Mr. A. Jaganath Mishra, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms. Shaguftha H. Badhwar, Mr. Prateek Badhwar and Ms. Samridhi Vats, Advocates.

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 01.07.2017 and also impugns Show Cause Notice dated 02.09.2021.



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

3. Vide Show Cause Notice dated 02.09.2021, 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”

4. Petitioner was engaged in the business of trading mobile phones and tablets and possessed GST Registration under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

5. Show Cause Notice dated 02.09.2021 was issued to the Petitioner seeking to cancel its registration. Though the notice does not specify any cogent reason, it merely states *“returns furnished by you under section 39 of the Central Goods and Services Tax Act,2017”* along with an observation stating *“failure to furnish returns for a continuous period of six months”*.

6. Said Show Cause Notice required the petitioner to appear before the undersigned i.e. authority issuing the notice on 02.10.2021 at 11:00. However, the said Notice does not bear the name of the designation of the officer where the petitioner had to appear. It merely mentions *“Jurisdiction Officer”*.



7. Further, the said Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Thus, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

8. Thereafter, impugned order dated 27.12.2021 passed on the said Show Cause Notice does not give any reasons for cancellation. It merely states that the registration is liable to be cancelled for the following reason “*Whereas no reply to notice to show cause notice has been submitted*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 22/12/2021 in response to the notice to show cause dated 02/09/2021*” and the reason stated for cancellation is “*whereas no reply to notice to show cause notice has been submitted*”. The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

9. It may be noted that 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.

10. Learned counsel for Petitioner submits that on account of financial constraints, Petitioner is no longer continuing the business.



The business activities of the Petitioner have been closed down since 31.03.2021. He further submits that Petitioner has filed all returns till March 2021.

11. We notice that Show Cause Notice and the impugned order are also bereft of any details. Accordingly, the same cannot be sustained. Neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation.

12. 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.

13. It is important to note that, according to the respondent, one of the consequences for cancelling a taxpayer'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.

14. It may be further noted that both the Petitioner and the department want cancellation of the GST registration of the Petitioner, though for different reasons.

15. In view of the fact that the Petitioner does not seek to carry on business or continue the registration and since no application for cancellation of registration appears to have been filed, the impugned order dated 27.12.2021 is modified to the limited extent that registration shall now be treated cancelled with effect from 02.09.2021 i.e., the date of the issue of the Show Cause Notice.

16. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.

17. It is clarified that Respondents are 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 of the GST registration after giving a proper



Show Cause Notice and an opportunity of hearing.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 16, 2024/NA