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* IN THE HIGH COURT OF DE-LHI AT NEW DELHI

Judgment delivered on: 19.03.2024

+ W.P.(C) 1400/2024

M/S SRI SAI VISHWAS POLYMERS Petitioner

versus

COMMISSIONER OF GST & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Akash Verma and Ms. Sakshi, Advocates

For the Respondents: Mr. Rajiv Aggarwal, ASC with Ms. Suhani Mathur,
Advocate

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 09.02.2023 whereby GST registration of the petitioner has been cancelled retrospectively with effect from 02.07.2017 and also impugns Show Cause Notice dated 31.01.2023. Further, Petitioner also impugns order dated 14.12.2023,



whereby the Show Cause Notice dated 23.09.2023, proposing a demand of Rs.3,83,22,698.00 against the Petitioner has been disposed of and a demand including penalty has been raised against the Petitioner. The said order has been passed under Section 73 of the Central Goods & Services Tax Act, 2017.

2. Petitioner is a partnership firm and is engaged in the business of manufacturing of plastic chairs, refining of gold, manufacturing and supply of Gold Bars and possessed GST registration.

3. Show Cause Notice dated 31.01.2023 was issued to the Petitioner seeking to cancel its registration for the following reason:-

“Non-compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed”

4. Show Cause Notice was issued to the petitioner on 31.01.2023. Though the notice does not specify any cogent reason, it merely states *“Non-compliance of any specified provisions in the GST Act, or Rules made thereunder as may be prescribed”*. Further, the said Show Cause Notice also does 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.

5. Thereafter, the impugned order dated 09.02.2023 passed on the



Show Cause Notice does not give any reasons for cancellation. It states that the registration is liable to be cancelled for the following reason “*Whereas no reply to notice to show cause has been submitted*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 09/02/2023 in response to the notice to show cause dated 31/01/2023*” and the reason stated for cancellation is “*Whereas no reply to notice to show cause has been submitted*”. The order further states that the effective date of cancellation of registration is 02.07.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

6. In our view, impugned order dated 09.02.2023 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. Pursuant to the order dated 09.02.2023, Petitioner submitted an application for condonation of delayed reply to order for cancellation of registration along with an application for revocation of order for cancellation of Registration.

8. The said applications were rejected vide order dated 14.03.2024 on the ground “*Whereas M/s Sri Sai Vishwas Polymers vide Application Ref. no AA070123137644G dated 09/03/23 had applied*



for condonation of delay of revocation application of cancellation of registration on the ground that accountant of taxpayer was not available during this period. As per the field visit report the firm was not found functioning at the time of visit at the given address. Whereas the applicant failed to specify reasons for delay in clear manner making it difficult for adjudication the application. Whereas the applicant was issued show cause notice vide ref. no ZA0704231391310 dated 27/04/23, giving a period 7 days. Whereas in response to said show cause notice the taxpayer vide its reply dated 05/05/23 failed to explain the reasons of delay in condonation application. Further as per GSTI report dated 28/02/24, at the time of visit the register firm was found to be non-functional. As such it appears that there was no suitable reason for delay in filling of revocation application. Therefore the application of the taxpayer is hereby rejected.”.

9. In the interregnum, petitioner was issued another Show Cause Notice dated 23.09.2023 on the ground that Petitioner had not declared the correct tax liability while filing the annual returns for financial year 2017-18.

10. Perusal of the Show Cause Notice shows that the Department has given separate headings i.e., excess claim Input Tax Credit [“ITC”]; scrutiny of ITC availed; and ITC claimed from cancelled dealers, return defaulters and tax nonpayers. A detailed reply dated 08.11.2023 was furnished by the petitioner to the said Show Cause Notice giving full disclosures under each of the heads.



11. Learned counsel for respondent submits that a field visit was carried out on 27.02.2024 wherein the petitioner's firm was not found functional at the registered address.

12. *Per Contra* learned counsel for the petitioner submits that since the registration of the petitioner has been cancelled by order dated 09.02.2023, petitioner could have not operated the business and as such the field officer could not have found the petitioner functional at the said premises.

13. We notice that the Show Cause Notice dated 31.01.2023 and the impugned order dated 09.02.2023 are 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.

14. 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.

15. 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.

16. It may further be noticed that registration of the petitioner was cancelled retrospectively and even as per the respondent, once the registration is cancelled retrospectively with effect from 02.07.2017, petitioner would not have been able to access the online portal and as such would not have received the Show Cause Notice on 23.09.2023 which led to the passing of the impugned order dated 14.12.2023.

17. In view of the aforesaid, order dated 14.03.2024 rejecting the revocation of cancellation of GST registration and impugned order dated 09.02.2023 cannot be sustained and is accordingly set aside. The GST registration of the petitioner is restored. The petitioner shall,



however, make all necessary compliances and file the requisite returns and information *inter alia* in terms of Rule 23 of the Central Goods and Services Tax Rules, 2017.

18. Further, the impugned order dated 14.12.2023 is set aside. The matter is remitted to the Proper Officer for re-adjudication. The petitioner shall file a response to the Show Cause Notice dated 23.09.2023 within a period of one week. Thereafter the Proper Officer shall re-adjudicate the Show Cause Notice in accordance with law after giving an opportunity of personal hearing to the petitioner.

19. In view of the above orders dated 09.02.2023, 14.12.2023 and 14.03.2024 are set aside. Petition is allowed and disposed of in the above terms. All rights and contentions of the parties are reserved.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 19, 2024

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