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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 21.03.2024

+ **W.P.(C) 1436/2024 & CM. APPLS. 5944/2024**

SUN N SAND EXIM INDIA PVT LTD

..... Petitioner

Versus

SUPERINTENDENT DIVISION KAROL BAGH RANGE 14 GST
DELHI NORTH 4 10 ASAF ALI ROAD NEW DELHI 110002

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Gaurav Gupta, Advocates.

For the Respondents:

Mr. Gibran Naushad, Senior Standing Counsel.

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CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 14.02.2023, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 02.07.2017.

2. Show Cause Notice dated 26.08.2022 was issued to the Petitioner seeking to cancel its registration on the ground “*During physical verification, the firm found to be non-existent*”.



3. Thereafter, the impugned order dated 14.02.2023 passed on the Show Cause Notice states that the registration is liable to be cancelled for the following reason “*1. The taxpayer replied to the SCN that they have closed their business a year before. However, since, the matter came to light only after ASMT-10 returned undelivered and during Physical verification, the firm was found non-existent. Hence, cancelled retrospectively.*” The order further states that effective date of cancellation of registration is 02.07.2017 i.e., a retrospective date.

4. Learned counsel for Petitioner submits that Petitioner regularly filed his returns till August 2022 and submitted a reply dated 29.08.2022 stating that “*Sir our Delhi branch is closed for 1 Year. We are filing Nil returns for the last 1 year. Kindly cancel my registration as soon as possible.*” Thereafter, Petitioner against submitted a reply manually on 05.10.2023.

5. He further submits that the Petitioner had shifted his business from Delhi to Bahadurgarh with effect from May 2019 and the last sale to a third party from the Delhi godown was on 18.07.2019. Similarly, the last transfer from Delhi godown to Bahadurgarh godown was during December 2019 and no business activity has been conducted in Delhi since then.

6. We notice that the Show Cause Notice and the impugned order are bereft of any details accordingly the same cannot be sustained and



neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation.

7. 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.

8. 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.

9. 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.

10. In our view, impugned order dated 14.02.2023 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.

11. It is clear that both the petitioner and the respondent want the GST registration to be cancelled, though for different reasons.

12. In view of the fact that the Petitioner does not seek to carry on business in Delhi or continue the registration, the impugned order dated 14.02.2023 is modified to the limited extent that registration shall now be treated as cancelled with effect from 26.08.2022 i.e., the date when the Show Cause Notice was issued. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.



13. 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 21, 2024
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