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

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Date of Decision: 20.12. 2023

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W.P.(C) 15777/2023 & CM No.63373/2023

M/S RAJ ENTERPRISES

..... Petitioner

Through: Mr. Pulkit Verma & Mr. Peyush
Purthi, Advs.

Versus

SUPERINTENDENT RANGE 25 GST DIVISION

NEW DELHI

..... Respondent

Through: Mr. Atul Tripathi & Mr. V.K. Atri,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE ANISH DAYAL

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning an order dated 27.09.2022 (hereafter '**the impugned order**') whereby the petitioner's GST registration was cancelled with effect from the date that it was granted, that is, with effect from 19.10.2020. The petitioner is aggrieved to the extent that its registration has been cancelled with retrospective effect.

2. The petitioner claims that it was, *inter alia*, engaged in the business of trading of magnetic and optical readers as well as other appliances and ancillary products. It had applied for registration with the GST authorities on 01.12.2021 and was assigned Goods and



Services Tax Identification Number (GSTIN) 07BGCPH3048A1Z1.

3. The petitioner claims that it had stopped carrying on its business and therefore made an application on 19.10.2021 for cancellation of its GST registration. Apparently, certain queries were raised online from the petitioner, which remained unanswered. Accordingly, on 30.11.2021, the respondent rejected the petitioner's application for cancellation of its GST registration.

4. Thereafter, on 01.12.2021, the petitioner once again applied for cancellation of its GST registration with effect from 15.11.2021. The petitioner claims that it has filed its returns till 31.12.2021.

5. The petitioner's application for GST registration was rejected once again. However, the respondent issued a show cause notice dated 10.08.2022 (hereafter '**the SCN**') proposing to cancel the petitioner's GST registration on the ground that the petitioner had not filed its return under the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**') for a continuous period of six months. The petitioner's GST registration was also suspended with effect from 10.08.2022.

6. The petitioner did not respond to the SCN and on 27.09.2022, the respondent passed an order cancelling the petitioner's GST registration with effect from 19.10.2020.

7. There is no cavil that in terms of Section 29(2)(c) of the CGST Act, the proper officer may cancel the GST registration from any date including with retrospective effect. However, the said cancellation with



retrospective effect cannot be arbitrary and whimsical. It must be predicated on objective criteria.

8. In the present case, the sole ground for cancelling the petitioner's GST registration is that it has not filed its return for a continuous period of six months. Absent anything more, this would not be sufficient ground to cancel the petitioner's registration even for the period during which the petitioner had filed its returns. Non-filing of returns for a period of six months or more cannot lead to the conclusion that the petitioner's GST registration is required to be cancelled even for the period while it was carrying on its business and duly filing its returns.

9. According to the respondent, cancellation of the petitioner's GST registration with retrospective effect would also result in denying the benefit of Input Tax Credit to other tax payers who had availed of supplies from the petitioner. We have some reservations as to this proposition. However, it is not necessary to examine the said issue in this petition. Even assuming that the cancellation of the GST registration has the consequences as claimed by the respondent, it underscores the necessity for the proper officer to apply his mind and, on the basis of some objective criteria, pass an order for cancellation of the GST registration with retrospective effect.

10. In the present case, it is also important to note that the SCN did not indicate that the petitioner's GST registration was proposed to be cancelled with retrospective effect. Thus, the petitioner had no effective opportunity to contest the retrospective cancellation of its GST



registration.

11. The petitioner has stopped carrying on its business with effect from 19.10.2021 and, as noted above, had made a request for cancellation of its GST registration from that date.

12. In view of the above, we consider it apposite to direct that the impugned order shall take effect from 31.12.2021, which is till the date the petitioner has filed its returns.

13. It is clarified that this would not preclude the respondent authorities from initiating or pursuing any proceedings against the petitioner for statutory violations, if any.

14. The petition is disposed of in the aforesaid terms. The pending applications, if any, are also disposed of.

VIBHU BAKHRU, J

ANISH DAYAL, J

DECEMBER 20, 2023

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