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

\+ W.P.(C) 14610/2023 & CM APPL. 58115/2023

BALAJEE PLASTOMERS PRIVATE LIMITED ..... Petitioner

Through: Mr. Rajesh Mahna, Mr. Ramanand Roy, Mr. Mayank Kouts & Mr. Shiva Narang, Advs.

versus

COMMISSIONER OF DELHI GST & ANR. ..... Respondents

Through: Mr. Rajeev Aggarwal, ASC with Mr. Aadish Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% 08.11.2023

1. Issue notice.

2. The learned counsel appearing for the respondents accepts notice.

3. The petitioner has filed the present petition impugning an order dated 29.01.2021 (hereafter '**the impugned order**'), whereby the petitioner's GST registration was cancelled with retrospective effect from 01.07.2017. The petitioner claims that it was registered under the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**') under the registration no. GSTIN 07AAECB8385L1Z4 with effect from 01.07.2017. The petitioner claims that it continued to carry on its business and complied with all the provisions of the CGST Act since its registration, however, the petitioner's business suffered adversely in the year 2019. Consequently, the petitioner decided to

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surrender its GST registration and filed an application for the cancellation of GST registration on 28.11.2019. The petitioner claims that it had sought cancellation with effect from the said date after discharging all its GST liabilities for the prior period. The petitioner also claims that it had filed all the returns for the period prior to November, 2019.

4. Respondent no.2 issued a notice dated 15.06.2020 seeking additional information regarding the petitioner's application for cancellation of its GST registration. Since the petitioner did not respond to the said notice, the petitioner's application for cancellation of its GST registration was rejected on 08.07.2020.

5. The petitioner, once again, filed an application for cancellation of its GST registration with effect from 28.11.2019 on 08.07.2020. The petitioner claims that respondent no.2 issued a notice in respect of the said application on 16.09.2020. According to the petitioner, the said notice was beyond the stipulated period and therefore, the petitioner was under the impression that its GST registration was cancelled, however, the petitioner's application for cancellation of its GST registration was rejected by an order dated 05.11.2020.

6. Thereafter, the concerned officer issued a Show Cause Notice dated 13.01.2021 (hereafter '**the SCN**') proposing to cancel the petitioner's GST registration for the reason that the petitioner had not filed the returns for a continuous period of six months. The petitioner was directed to respond to the SCN and appear before the concerned officer on the stipulated date, however, no such date was specified in the SCN. The petitioner's GST registration was also suspended with effect from 13.01.2021.

7. The petitioner's GST registration was cancelled by the

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impugned order with retrospective effect from 01.07.2017.

8. As noted above, the SCN proposing to cancel the petitioner's GST registration did not set out the date for the personal hearing although it called upon the petitioner to appear on the said date. It is also important to note that the SCN did not propose the cancellation of GST registration with retrospective effect.

9. The impugned order does not set out any reason for cancelling the petitioner's registration except stating that no reply was received to the SCN. It is the petitioner's case that it had stopped its business in the year 2019 and applied for the cancellation of GST registration with effect from 28.11.2019. In these circumstances there are no grounds in the impugned order setting out any reason for the cancellation of GST registration with retrospective date, that is, 01.07.2017.

10. In view of the above, respondent no.2's decision to cancel the GST registration with retrospective date cannot be sustained. It is also material to note that the petitioner's GST registration was proposed to be cancelled on the ground that it had not furnished any return for a period of six months. We are unable to accept that this could be the ground for cancelling the GST registration *ab initio* from the date it was granted. If the petitioner filed its returns during the relevant period when it was functioning, there would be no reason to cancel the GST registration during the said period for the reason that the subsequent returns have not been filed.

11. In view of the above, we consider it apposite to direct that the cancellation of the petitioner's GST shall take effect from 28.11.2019 and not from 01.07.2017.

12. We further clarify that this would not preclude the

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respondents from taking any other steps under the CGST Act or the relevant statute, in accordance with the law.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 8, 2023
Ch

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