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

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Date of decision: 26.02.2024

+ **W.P.(C) 2797/2024 & CM APPL. 11429/2024**

LAXMI JAIN

..... Petitioner

versus

PRINCIPAL COMMISSIONER OF DELHI GOODS AND
SERVICES TAX & ANR. Respondents**Advocates who appeared in this case:**For the Petitioner: Mr. Sumit K. Batra, Mr. Manish Khurana
and Ms. Priyanka Jindal, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC.

CORAM:-**HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order of cancellation of registration dated 26.09.2020 whereby the GST registration of the Petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 12.09.2020.



2. Vide Show Cause Notice dated 12.09.2020, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

“Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months”

3. Petitioner was working in the name of M/s Laxmi industries and was engaged in the wholesale business of trading and manufacturing of copper and possessed GST registration. Petitioner submitted an application seeking Cancellation of Registration Certificate on 16.05.2019.

4. Pursuant to the said application, notice was issued by the respondent on 17.03.2020 seeking additional information and documents relating to application for cancellation of registration stating *“Cancellation Details - Date from which registration is to be cancelled - Date from Registration to be cancelled is Incorrect. Enter correct date. 2 Cancellation Details - Others (Please specify) - Please submit documents to verify ITC in the department in the Ward 82 ITO Delhi”*

5. The application of the petitioner seeking cancellation was rejected vide order dated 05.06.2020, however, in the said order no reason was mentioned it merely stated *“Whereas the undersigned is of the opinion that your provisional registration is liable to be cancelled*



for following reason(s).” However, thereafter nothing is stated and space is blank.

6. Thereafter, Show Cause Notice dated 12.09.2020 was issued to the Petitioner seeking to cancel its registration. However, the 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.

7. Further, the impugned order dated 26.09.2020 passed on the Show Cause Notice dated 12.09.2020 does not give any reasons for cancellation. It, however, states that the registration is liable to be cancelled for the following reason “*whereas no reply to the show cause notice has been submitted*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 22.09.2020 in response to the notice to show cause dated 12.09.2020*” and the reason stated for the cancellation is “*whereas no reply to notice show cause has been submitted*”. The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date.

8. As per the petitioner, said business was managed by the husband of the Petitioner, who expired on 25.02.2019 due to serious ailments. Due to the death of her husband, petitioner could not



continue business and applied for cancellation of GST registration and was unable to file returns from April 2019 onwards.

9. Learned counsel for the petitioner submits that the petitioner is no longer interested in continuing the business and the business has been discontinued.

10. The show cause notice and the impugned order are also bereft of any details accordingly the same cannot be sustained. Further, neither the show cause notice, nor the order spell out the reasons for retrospective cancellation

11. 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.

12. 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.

13. It may be further noted that both the Petitioners and the department want cancellation of the GST registration of the Petitioner, though for a different reason.

14. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 26.09.2020 is modified to the limited extent that registration shall now be treated as cancelled with effect from 16.05.2018 i.e., the date when the application of cancellation of GST registration was submitted. Petitioner shall comply with the requirements of Section 29 of the Central Goods and Services Tax Act, 2017.

15. It is clarified that Respondents are also 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.



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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 26, 2024/vp

HIGH COURT OF DELHI



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