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

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Date of decision: 29.02.2024

+ **W.P.(C) 327/2024**

GAURAV BANSAL

..... Petitioner

versus

COMMISSIONER OF GST & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Prince Mohan Sinha, Mr. Dinesh Mohan Sinha, Mr. Rajeev Arora, Mr. Shivnath & Mr. Manish Jain, Advocates.

For the Respondents: Mr. Akshay Amritanshu, Mr. Samyak Jain & Mr. Ayush Raj, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 28.07.2021, whereby, the GST registration of the petitioner has been cancelled retrospectively with effect from 15.11.2017. Said cancellation order was issued pursuant to a Show Cause Notice for cancellation dated 08.07.2021.

2. Petitioner was the proprietor of Jainna Enterprises and was engaged in the business of manufacturing of cooper wire and cables and possessed GST registration.



3. Vide Show Cause Notice dated 08.07.2021, petitioner was called upon to show cause as to why the registration be not cancelled on the ground that “*Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months.*”

4. Thereafter, the impugned order dated 28.07.2021 passed on the Show Cause Notice does not give reasons of cancellation. It, however, states that the registration is liable to be cancelled for the following reason “*No response received to query raised*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 17/07/2021 in response to the notice to show cause dated 08/07/2021*” and the reason stated for cancellation is “*No response received to query raised*”. The order further states that effective date of cancellation of registration is 15.11.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

5. The Show Cause Notice also did not put the petitioner to notice that the registration was liable to be cancelled retrospectively. Accordingly, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

6. Learned Counsel for petitioner submits that petitioner has filed the GST returns for the period ending 30.06.2021 and thereafter petitioner has not carried out any business and is not interested in conducting any business and wishes to close the business.



7. We notice that 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.

8. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, 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. The 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 in this regard is correct, it would follow that the proper officer is also 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. It is clear that both the petitioner and the respondent want the GST registration to be cancelled, though for different reasons.

11. In view of the above facts and circumstances, the order of cancellation dated 28.07.2021 is modified to the extent that the same shall be operative with effect from 30.06.2021, i.e., the period upto which the Petitioner has filed its GST returns. Petition shall comply with the provisions of Section 29 of the Act.

12. It would be, however, open to the respondent to take further action in accordance with law. Respondents are also not precluded from taking any steps for recovery of any tax, penalty or interest that may be due from the petitioner in accordance with law including retrospective cancellation of the GST registration.

13. The petition is accordingly disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 29, 2024

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