



2024:DHC:4424-DB



\$~43

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

%

Date of decision: 27.05.2024

W.P.(C) 1061/2024 & CM APPLs. 4431/2024, 24635/2024

M/S ROSMERTA HSRP

VENTURES PRIVATE LIMITED

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Charanya Lakshmi Kumaran, Mr. Yogendra Aldak,
Mr. Kunal Kapoor and Mr. Yatharth Tripathi, Advocates.

For the Respondents: Mr. Anurag Ojha, SSC with Mr. Kumar Abhishek and Mr.
Subham Kumar, Advocates for R-1 to 5

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 05.08.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 27.07.2022. Petitioner also impugns Show Cause Notice dated 27.07.2022.

2. Petitioner is engaged in the business of supplying High Security Registration Plates and possessed GST registration bearing number 07AAFCR7758G1ZZ under the Central Goods and Services Act, 2017 (hereinafter referred to as the Act).



3. Show Cause Notice dated 27.07.2022 was issued to the petitioner seeking to cancel its registration. Though the notice does not specify any cogent reason, it merely states “*Others*”. 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.

4. Thereafter, impugned order dated 05.08.2022 passed on the Show Cause Notice does not give any reasons for cancellation. It merely states that the registration is liable to be cancelled for the following reason “*1. GSTN registration is hereby cancelled under Section 29(2) of the CGST Act, 2017 read with Section 29(3) and 29(5) of Act ibid. During the visit on 20.7.2022 address of principal place of business at B-58, Ground Floor, Phase-I, Mayapuri Industrial Area, Phase-I, New Delhi-110064 found non-existent.*”. The order further states that effective date of cancellation of registration is 27.07.2022 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. It may be noted that in the impugned order of cancellation, in the column of dues at the bottom there is ‘zero’ amount stated to be due against the petitioner and the table shows nil demand.

6. As per the Petitioner, High Security Registration Plates



2024:DHC:4424-DB



(HSRPs) were being provided by respective States. Concession agreements were entered with HSRP manufacturers, which were duly approved by the Ministry of Road Transport and Highway (MoRTH). However, MoRTH vide its Notifications Nos. G.S.R 1162(E) dated 04.12.2018 and S.O. 6052 (E) dated 06.12.2018 modalities of the system supplying the HSRP were changed.

7. Consequently, the Transport Department State of NCT of Delhi vide its Order No. DC/OPS/TPT/2020/075445667/1692-1694 dated 14.05.2020 terminated the concession agreement entered with the Petitioner w.e.f. 01.04.2019/01.07.2019, before the expiry of the initially 15 year agreed period.

8. As per the petitioner after the closure of the project, Petitioner carried out closure formalities from its principal place of business at Mayapuri till June 2021, and started carrying out the activities from its premises at Kapashera, which was also disclosed as the additional place of business.

9. As per the petitioner, he could not reply to the Show Cause Notice dated 27.07.2022 as the accountant had left the job and the petitioner was unaware of the said proceedings. It is contended that Petitioner became aware of the cancellation of its GST registration when petitioner attempted to file GST returns for the month of August 2022.



10. Vide letters dated 02.09.2023, 06.09.2023, 29.09.2023, 08.11.2023 and 22.11.2023, petitioner sought revival of GST registration, however, no response has been received from the department till date.

11. Petitioner intends to carry out further business activities from the additional place of business situated at Kapashera and is willing to comply with all the pending formalities including filing of pending returns up to date.

12. Further, we may note that the Show Cause Notice and the impugned order are bereft of any details. Neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation.

13. 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



2024 : DHC : 4424 - DB



covering the period when the returns were filed, and the taxpayer was compliant.

14. It is important to note that, according to the respondent, one of the consequences for cancelling a taxpayer'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 taxpayer 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.

15. In view of the aforesaid, order dated 05.08.2022 cannot be sustained and is accordingly set aside. The GST registration of the petitioner is restored. Petitioner shall, however, make all necessary compliances and file the requisite returns and information *inter alia* in terms of Rule 23 of the Central Goods and Services Tax Rules, 2017.

16. 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



2024:DHC:4424-DB



retrospective cancellation of the GST registration after giving a proper notice and an opportunity of hearing.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 27, 2024/vp