



2024:DHC:4087-DB



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

% Date of decision: 10.05.2024

W.P.(C) 1185/2024 & CM APPL. 4958/2024

N K INDUSTRIES THROUGH ITS PARTNER MR NEERAJ
KATYALPetitioner

versus

COMMISSIONER OF DELHI GOODS AND SERVICES TAX
AND ANR Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Rakesh Kumar, Mr. P. K. Gambhir & Mr. Akul
Mangla, Advocates

For the Respondent: Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar,
Ms. Shaguftha H. Badhwar, Ms. Samridhi Vats, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 07.03.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 23.01.2020 and also impugns Show Cause Notice dated 31.01.2022.

2. Petitioner is engaged in the business of manufacturing, retail and wholesale of Air or Vacuum Pumps and Compressor and



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possessed GST Registration under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

3. Show Cause Notice dated 31.01.2022 was issued to the Petitioner seeking to cancel its registration. The notice stated, “*Invalid Bank Accounts provided in Registration data.*” Said Show Cause Notice required the petitioner to appear before the undersigned i.e., authority issuing the notice. However, the said Notice did not bear the date and time whereby the Petitioner was required to appear for personal hearing.

4. The said Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Thus, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

5. Thereafter, impugned order dated 07.03.2022 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 “*Whereas no reply to notice to show cause has been submitted*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 09/02/2022 in response to the notice to show cause dated 31/01/2022*” and the reason stated for cancellation is “*Whereas no reply to notice to show cause has been submitted*”. The order further states that effective date of cancellation of registration is 23.01.2020 i.e., a retrospective date. There is no



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material on record to show as to why the registration is sought to be cancelled retrospectively.

6. It may be noted that on the one hand, it states that the registration is liable to be cancelled and on the other, in the column at the bottom there are no dues stated to be due against the petitioner and the table shows nil demand.

7. Pursuant to the said impugned order, Petitioner filed an application dated 07.06.2023 seeking revocation of cancellation of GST registration. On the said application, Petitioner was issued Show Cause Notice dated 06.07.2023 for rejection of application for revocation of cancellation of GST registration stating “*Any Supporting Document - Others (Please specify) - please upload the undertaking on firms letter pad with complete present address of the business place with supported documents alongwith details of current account of the firm.*” Petitioner had filed a reply dated 06.07.2023 to the said Show Cause Notice.

8. Thereafter, vide order dated 24.07.2023, the application for revocation of cancellation was rejected on the ground that “*1.Any Supporting Document - Others (Please specify) - please upload the undertaking on firms letter pad with complete present address of the business place with supported documents alongwith details of current account of the firm. 2.Not admissible as per notification 03/31-3-2023.*”



9. Learned counsel for the respondents submits that the proceedings were initiated because petitioner had not furnished correct details of the bank account of the petitioner at the time when the registration was sought for. Para 1 and 2 of order dated 27.02.2024 reads as under:

“1. Learned counsel for the respondents submitted that action was taken because petitioner had not furnished correct details of the bank account of the petitioner at the time when the registration was sought for.

2. He submitted that details furnished are of a bank account opened after registration and the very first entry dated 16.09.2020 demonstrates that there is another account of the petitioner from which the initial deposit of Rs. 7 Lacs was made in this account. However, details on the said account have not been provided.”

10. Pursuant to the said order dated 27.02.2024, an affidavit has been filed by the petitioner contending that the said account is the only account of the petitioner, and the amount of Rs 7 Lacs was received from Ms. Shikha Malhotra who is partner of the partnership firm.

11. As per the Petitioner, all GST returns for the period till January 2022 have been filed.

12. Learned counsel for petitioner submits that petitioner is no longer interested in continuing business.

13. We notice that the Show Cause Notice and the impugned order are also bereft of any details. Neither the Show Cause Notice, nor the



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order spell out the reasons for retrospective cancellation. Accordingly, the same cannot be sustained. However, as the petitioner is no longer interested in continuing the business, we are not quashing the Show Cause Notice.

14. 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.

15. 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 is required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a



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taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

16. It is clear that both the petitioner and the respondent want the GST registration to be cancelled, though for different reasons.

17. In view of the above and the fact that the Petitioner does not seek to carry on business or continue the registration, impugned order dated 07.03.2022 is modified to the limited extent that registration shall now be treated as cancelled with effect from 31.01.2022 i.e., the date when Show Cause Notice seeking cancellation of GST registration was issued.

18. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.

19. 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 retrospective cancellation of the GST registration after issuing a proper Show Cause Notice and granting an opportunity of hearing to the petitioner.

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

SANJEEV SACHDEVA, J



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RAVINDER DUDEJA, J

MAY 10, 2024/vp

