



2024:DHC:4102-DB



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

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Date of decision: 17.05.2024

W.P.(C) 1539/2024

S S ENTERPRISES THROUGH ITS PROP ZAHIRA
BEGUM

..... Petitioner

versus

COMMISSIONER OF DELHI GOODS AND SERVICE TAX &
ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. M. A. Ansari, Mr. Khursheed Ahmad, Mr. Sameed Salim, Mohd Kamil & Mr. Ahmad Ansari, 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 03.01.2024 whereby the appeal of the Petitioner has been dismissed solely on the ground that the same is barred by limitation. Petitioner also impugns order dated 27.06.2019 whereby the GST registration of the Petitioner was cancelled retrospectively with effect from 01.07.2017 and also impugns Show Cause Notice dated 02.03.2019.



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2. Subject petition has been filed by Shri. Zahira Begum, proprietor of M/s S.S Enterprises. Petitioner was engaged in the business of trading of table, kitchen or other household articles and was registered under the Goods and Service Act, 2017 (hereinafter referred to as 'the Act').

3. Learned counsel for Petitioner submits that the said proprietorship firm was formerly a partnership firm of the husband of the Petitioner and was subsequently converted into a proprietorship firm in 2012 in the name of the Petitioner.

4. Show Cause Notice dated 02.03.2019 was issued to the Petitioner seeking to cancel its registration. Though the notice does not specify any cogent reason, it merely states "*As per VATI Report the dealer is not found functioning*". Further, 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, the impugned order dated 27.06.2019 passed on the Show Cause Notice dated 02.03.2019 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*



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29/04/2019 in response to the notice to show cause dated 02/03/2019” 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 01.07.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

6. 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.

7. As per the Petitioner, she was conducting business and has filed GSTR-1 returns with output Tax liability up to March 2019. However, the Petitioner's business has closed down due to non-availability of funds, ailing ill health of the Petitioner’s father-in-law and consequently his demise on 05.07.2022.

8. As per the Petitioner, due to the said reasons and various business expenses like rent, salary of employees etc, Petitioner was unable to continue her business and the business has been closed down since 2019.

9. We notice 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. Accordingly, the same cannot be sustained.



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10. 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.

11. 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.

12. It may be further noted that both the Petitioner and the respondent want cancellation of the GST registration of the Petitioner,



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though for different reasons.

13. In view of the fact that the Petitioner does not wish to carry on business or continue with the registration, impugned order dated 27.06.2019 is modified to the limited extent that registration shall now be treated as cancelled with effect from 27.06.2019 i.e., the date when the order cancelling the GST registration of the Petitioner was issued. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.

14. 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 issuance of a proper Show Cause Notice and complying with the provisions of natural justice.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 17, 2024

RM