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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 08.05.2024

+ **W.P.(C) 6510/2024 & CM. APPLS. 27148-49/2024**

M/S USHA INDUSTRIES THROUGH ITS PARTNER MR
SANDEEP SINGHAL Petitioner

Versus

ASSISTANT COMMISSIONER WARD 82 AND ANOTHER.
..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Nitesh Srivastava, Mr. Ankit Sareen and Mr. Yash Tandon, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, Additional Standing Counsel with Ms. Samridhi Vats and Ms. Shagufta Badhwar, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 03.02.2021 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017 and also impugns Show Cause Notice dated 12.01.2021.

2. Issue notice. Notice accepted by Learned counsel appearing for respondent. With the consent of parties, petition is taken up for final disposal today.



3. Petitioner is engaged in the business of manufacturing and trading of cable wires and possessed GST Registration under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

4. Show Cause Notice dated 12.01.2021 was issued to the Petitioner seeking to cancel its registration. Though the notice does not specify any cogent reason, it merely states “*Any taxpayer other than composition taxpayer has not filed returns for a continuous period of six months.*” 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.

5. 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.

6. Thereafter, impugned order dated 03.02.2021 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 21/01/2021 in response to*



the notice to show cause dated 12/01/2021” 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.

7. 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.

8. As per the petitioner, due to operational and cash flow issues, Petitioner closed down business operations in October 2019. The same led to non-filing of GST returns, however, all returns have been filed till October 2019.

9. Learned counsel for petitioner submits that petitioner is no longer interested in continuing business and has closed down all business activities.

10. We notice that the Show Cause Notice and the impugned order are also 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.



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



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

14. 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 03.02.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 12.01.2021 i.e., the date when Show Cause Notice seeking cancellation of GST registration was issued.

15. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017 and file all requisite returns with penalty if any.

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

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

SANJEEV SACHDEVA, J

MAY 08, 2024/NA

RAVINDER DUDEJA, J