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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 08.05.2024

+ **W.P.(C) 6535/2024 & CM. APPLS. 27278/2024**

ARVIND SHARMA

..... Petitioner

Versus

SUPERINTENDENT, RANGE - 115, CENTRAL GOODS AND
SERVICE TAX & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Anurag Rajput, Advocate.

For the Respondents:

Mr. Gibran Naushad, Senior Standing Counsel.

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CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns Show Cause Notice dated 17.07.2023 and order dated 02.08.2022, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 09.10.2019.

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



3. Petitioner claims to be a trader in metal scrap and was registered under the Central Goods and Service Tax Act, 2017. As per the petitioner, petitioner had shut down his business in the month of September, 2023.

4. The impugned Show Cause Notice dated 17.07.2023 was issued to the petitioner to show cause as to why his GST registration be not cancelled. The said Show Cause Notice reads as under:-

“Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1 Section 29(2)(e)-registration obtained by means of fraud, wilful misstatement or suppression of facts

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

You are hereby directed to appear before the undersigned on 24/07/2023 at 10:30 AM

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the

case will be decided ex parte on the basis of available records and on merits .

Please note that your registration stands suspended with effect from 17/07/2023.”

5. The Show Cause Notice alleges that registration has been obtained by means of fraud, willful misstatement or suppression of



facts. No particular of fraud, willful misstatement or suppression of facts are borne out in the Show Cause Notice.

6. The noticee was directed to appear before the undersigned on 24.07.2023 at 10:30 AM. However, the Show Cause Notice does bear the name, designation or office of the person issuing the Show Cause Notice. There is no clarity as to where and before whom the petitioner had to appear in response to the Show Cause Notice. The Show Cause Notice is also not signed by any proper officer and bears a digital signature which bears an endorsement “Digitally signed by DG GOODS AND SERVICES TAX NETWORK 07 Date 2023.07.17 18:00:22 IS.”

7. On the impugned Show Cause Notice, the order of cancellation of registration has been passed, which reads as under:-

“Order for Cancellation of Registration

This has reference to show cause notice issued dated 17/07/2023.

The effective date of cancellation of your registration is 09/10/2019

3. It may be noted that a registered person furnishing return under sub-section (1) of section 39 of the CGST Act, 2017 is required to furnish a final return in FORM GSTR-10 within three months of the date of this order.

4. You are required to furnish all your pending returns.

5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to



discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

8. We may note that the order of cancellation also does not give any details and is a completely unreasoned order. The order merely refers to the Show Cause Notice and states that the effective date of cancellation is 09.10.2019 i.e. a retrospective date. There is no clarity as to on what ground the registration of the petitioner has been cancelled.

9. Today in Court, learned counsel for respondent has produced a communication dated 17.07.2023, issued by the Deputy Commissioner (Anti Evasion) to Deputy/Assistant Commissioner, CGST Division Mundaka to the effect that petitioner firm was found non-existent on physical verification and instructions were issued to cancel the registration of the petitioner from the date of registration. The communication encloses an inspection report to the effect that the address could not be located as there was no proper serial number marking in the location and on local inquiry, no information could be traced out of the petitioner and when petitioner was sought to be contacted, his mobile was not accessible. The same is taken on record.

10. There is clearly non-application of mind on the part of the jurisdictional Commissioner and he seems to have acted simply on the recommendation of the Deputy Commissioner (Anti Evasion). The



documents which have been produced in Court by learned counsel for the respondent have admittedly not been furnished to the petitioner along with the Show Cause Notice.

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.

12. 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.

13. Since the impugned Show Cause Notice is itself defective and the impugned order is cryptic without any reason, the same cannot be



sustained. Normally in such circumstances, this Court would have quashed the Show Cause Notice, however, since the petitioner has himself stated that petitioner has shut down his business in the month of September, 2023 and wanted cancellation of the registration, the order is modified to the limited extent that the cancellation shall be effective from the date of the order i.e. 02.08.2023 and not retrospectively.

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

15. 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 08, 2024/NA