



2024:DHC:4436-DB



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

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Date of decision: 27.05.2024

W.P.(C) 6729/2024

VISIONTEK ENGINEERS

..... Petitioner

versus

COMMISSIONER OF SGST DELHI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Shailender Verma, Mr. Subhash Chandra Gupta & Mr. Ashok Kumar, Advocates.

For the Respondents: 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 23.07.022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 11.10.2021.

2. Petitioner is engaged in the business of providing service/contractor and trader of air condition machines and possessed GST



registration bearing number 07AEYPB6907R2ZK under the Central Goods and Services Act, 2017 (hereinafter referred to as the Act).

3. Show Cause Notice dated 11.10.2021 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 does not bear the date and time whereby the petitioner was required to appear for personal hearing.

4. 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.

5. Thereafter, impugned order dated 23.07.2022 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 07/01/2022 in response to the notice to show cause dated 11/10/2021*” and the reason stated for cancellation is “*Whereas no reply to notice to show cause has been*



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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. Learned counsel for the petitioner under instructions submits that after cancellation of the GST registration till the date petitioner has not carried out any business.

8. 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.

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

10. 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.

11. In view of the aforesaid, order dated 23.07.2022 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.

12. 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



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

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MAY 27, 2024/sk