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

% *Date of Decision: 13.12.2023*

+ **W.P.(C) 16016/2023**

Pratima Tyagi

..... Petitioner

Through: Mr. Dinesh Mohan Singha, Mr.
Wakil Kumar & Mr. Rajeev Deora,
Advs.

versus

COMMISSIONER OF G.S.T & ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning an order dated 03.02.2021 (hereafter '**the impugned order**'), whereby the petitioner's GST registration was cancelled with retrospective effect from 01.07.2017.

2. It is the petitioner's case that she was carrying on the business under the name of sole proprietorship concern 'M/s P. S. Metal' but she closed down her business activities on 11.11.2019 on account of ill-health. Therefore, the petitioner filed an application on the said date for cancellation of her GST registration. The same was duly



acknowledged, but the petitioner's application for cancellation of the registration was not processed.

3. Thereafter, the proper officer issued a show cause notice dated 12.01.2021 (hereafter '**the SCN**') proposing to cancel the petitioner's GST registration on the ground that the petitioner had not filed the returns for a continuous period of six months. The petitioner was called upon to furnish a reply to the SCN within a period of seven working days from the date of service of the SCN. Additionally, the petitioner was called upon to appear for a personal hearing on the appointed date and time, failing which she was cautioned that the case would be decided *ex parte*.

4. It is material to note that the SCN did not specify the appointed date and time fixed for hearing the petitioner. Thereafter, the proper officer passed the impugned order cancelling the petitioner's GST registration. The impugned order does not specify any reason for cancelling the petitioner's GST registration, however, it mentions that no reply was received to the SCN.

5. It is apparent from the above that the impugned order is not sustainable as it is not informed by reason. The impugned order has also been passed in violation of the principles of natural justice as the petitioner was not afforded any opportunity of being heard. Although, the SCN called upon the petitioner to appear for personal hearing, it did not specify the date, time or venue of the personal hearing. Thus, there was no possibility for the petitioner to appear at the hearing.



6. As stated above, it is also important to note that the impugned order cancelled the petitioner's GST registration with retrospective effect from 01.07.2017. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, the proper officer has a discretion to cancel the registration from any date including with retrospective effect, however, the said discretion cannot be exercised in arbitrary manner. The decision to cancel the registration with retrospective effect must be based on some objective criteria. In the present case, the petitioner's GST registration was cancelled on account of non-filing of returns for a period of six months. We find no reason for cancellation of the petitioner's GST registration even for a period when she was filing the returns.

7. According to the respondents, the cancellation of GST registration would also have a fact of denying the petitioner's customers the benefit of the input tax credit availed in respect of the supplies provided by the petitioner. There is a controversy whether such consequences follow on cancellation of the supplier's registration with retrospective effect. However, assuming that the respondents are correct in their view, it underscores the requirement of the proper officer to be fully satisfied that the registration was required to be cancelled with retrospective effect to include the period during which the tax payer had made supplies and had duly filed the returns for the same. As noticed above, the impugned order does not provide any reason for cancellation of the GST registration let alone reason for doing so with retrospective effect.



8. As stated above, the impugned order is required to be set aside, however, we do not consider it apposite to do so since the petitioner's prayer is limited. She prays that her GST registration be cancelled with effect from 11.11.2019 as the petitioner had stopped her business from the said date.

9. In view of the above, we direct that the impugned order cancelling the petitioner's GST registration would take effect from 11.11.2019 and not from 01.07.2017.

10. It is also clarified that this would not preclude the respondents from taking any action or steps in accordance with the law, if it is found that the petitioner has defaulted in her statutory obligations.

11. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 13, 2023

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