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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 21.02.2024

+ W.P.(C) 2568/2024 & CM APPL. 10575/2024 & CM APPL.
10576/2024

M/S MK TRADERS THROUGH ITS
PROPRIETOR AJAY KUMAR

..... Petitioner

versus

SALES TAX OFFICER CLASS II AVATO

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. R.P. Singh and Mr. Priyank Goel, Advocates

For the Respondent:

Ms. Shaguftha Hameed, Mr. Prateek Badhwar, Ms.

Samridhi Vats, Advocates for Mr. Rajeev

Aggarwal, ASC

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 25.08.2021 whereby the GST registration of the Petitioner was cancelled retrospectively with effect from 07.07.2017. Petitioner also impugns show cause notice dated 30.06.2021.

2. Vide show cause notice dated 30.06.2021 petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-



“The firm has made purchases from suspicious firms”

3. Petitioner was engaged in a business of supply of goods such as Polishes, Creams for footwear furniture, floors, glass or metal and baby's garments & clothing accessories and possessed GST registration

4. Records clearly demonstrate that the Petitioner had submitted an application seeking cancellation of GST registration on 28.09.2019.

5. Pursuant to the said application, the taxpayer after a gap of 9 months was issued another show cause notice dated 12.05.2020 seeking stock statement and sale-purchase summary. However, the said notice did not provide an opportunity for personal hearing. Thereafter, vide order dated 26.05.2020, the provisional registration of the petitioner had been suspended.

6. Show Cause Notice dated 30.06.2021 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.

7. The GST registration of the Petitioner was cancelled by order dated 25.08.2021, however, the said order does not give any reasons for cancellation of the registration. 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”.

8. The said order in itself is contradictory. The order states, “*reference to your reply dated 09.07.2021 to the Show Cause Notice dated 30.06.2021*” and 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 07.07.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

9. Neither the show cause notice nor the order spell out the reasons for cancellation. In fact, in our view, order dated 29.01.2021 does not qualify as an order of cancellation of registration. On 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.

10. Learned Counsel for the petitioner submitted that the petitioner does not wish to continue business and has closed all business activities.

11. *Per Contra* learned counsel for the respondent submitted that proceedings under Section 73 of the Central Goods and Services Tax Act, 2017 have already been initiated against the petitioner and the same are pending.



12. 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.

13. 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 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.



14. It may be further noted that both the Petitioners and the department want cancellation of the GST registration of the Petitioner, though for a different reason.

15. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 25.08.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 29.08.2019 i.e., the date when the Petitioner had submitted the application for cancellation of GST registration.

16. Petitioner shall comply with the requirements of Section 29 of the Act and furnish the requisite details to the Department.

17. It is clarified that respondents are also not precluded from taking any steps for recovery of any tax, penalty or interest that may be due from the petitioner in accordance with law.

18. This order would be without prejudice to the proceedings initiated by the respondent under Section 73 of the Act and the defense of the petitioner thereto.

19. The petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

FEBRUARY 21, 2024
'rs'

RAVINDER DUDEJA, J