

2024:DHC:304-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 12.01.2024

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W.P.(C) 491/2024 & CM. APPL. 2165/2024**RAJNI GUPTA PROPRIETOR OF GUPTA SALES
CORPORATION**

..... Petitioner

versus

PRINCIPAL COMMISSIONER STATE GST AND ANR

..... Respondents

Advocates who appeared in this case:For the Petitioner: Mr. Santanu Kanungo and Mr. Rajeev Bansal,
Advocates.For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats
Advocate.**CORAM:-****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order dated 12.09.2020, whereby the GST registration of the petitioner had been cancelled with retrospective effect from 01.07.2017.
2. Issue notice. Notice is accepted by learned counsel appearing for the respondents.
3. With the consent of parties, petition is taken up for final disposal.
4. As per the petitioner, petitioner was carrying on the business of manufacturing paint and was also registered under the Goods and



Services Tax Act, 2017. Petitioner stopped the manufacturing business on 31.01.2019 and submitted an application on 25.02.2019, seeking cancellation of registration. Pursuant to the said application, notice was given to the petitioner on 12.09.2019, calling for certain details, which as per the petitioner were already part of the application seeking cancellation. Thereafter, an order was passed on 21.09.2019, for cancelling the provisional registration of the petitioner. Perusal of the order shows that the same does not state any reason, however, merely refers to the application filed by the petitioner seeking cancellation.

5. Post the order dated 21.09.2019, another notice was issued to the petitioner on 09.03.2020, calling for additional information, which once again as per the petitioner was furnished. Thereafter, another order of 19.03.2020 was passed stating that the provisional registration was liable to be cancelled for the following reason(s).

6. However, the letter once again had not specified any reason. The subject show cause notice was issued to the petitioner on 01.09.2020 on the ground that returns had not been filed for a continuous period of six months.

7. Thereafter, the impugned order dated 12.09.2020 has been passed for cancelling the registration of the petitioner with effect from 01.07.2017.

8. Records clearly demonstrates that petitioner had submitted an application seeking cancellation of the GST registration on 25.02.2019



and thereafter, vide orders dated 21.09.2019 and 19.03.2020, the provisional registration of the petitioner had been cancelled. Once the registration stood cancelled, there was no cause for the petitioner to file any returns. Accordingly, the cancellation of the registration on the ground that petitioner has failed to file returns is not sustainable. Further, we note that the cancellation of registration has been done with retrospective effect.

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 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.

11. Further, the show cause notice dated 01.09.2020 does not put the petitioner to notice that the registration was liable to be cancelled retrospectively. Accordingly, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

12. In view of the above facts and circumstances, the order of cancellation is modified to the extent that the same shall operate with effect from 25.02.2019, i.e., the date when petitioner first applied for cancellation of registration. It is clarified that respondents are 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

January 12, 2024/NA