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

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Date of decision: 04.03.2024

+ **W.P.(C) 3220/2024 & CM. APPLS. 13253-54/2024**

M/S OPTIMUM VIKING SATCOM INDIA PVT. LTD... Petitioner

versus

PRINCIPAL COMMISSIONER &amp; ORS

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner:

Mr. Puneet Aggarwal, Mr. Yuvraj Singh, Mr. Prem Kandpal, Mr. Tanmay and Mr. Chetan Kumar, Advocates.

For the Respondents:

Mr. Rajeev Aggarwal, ASC with Ms. Samridhi Vats, Advocate.

Ms. Sonu Bhatnagar, Senior Standing Counsel with Ms. Nistha Mittal and Ms. Apurva Singh, Advocates.

**CORAM:-****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J (ORAL)**

1. Petitioner impugns order of cancellation of registration dated 10.06.2022 whereby the GST registration of the Petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 18.11.2021.

2. Issue notice. Notice is accepted by learned counsel for



Respondents. With the consent of parties, the petition is taken up for final disposal.

3. By Show Cause Notice dated 18.11.2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason: -

*“Collects any amount as representing the tax but fails to pay the same to the account of the Central/State Government beyond a period of three months from the date on which such payments becomes due.”*

4. Petitioner was engaged in business of import and sale of Satellite Antenna Systems, Receivers and Components etc., provisions of indirect selling, commissioning, and maintenance and possessed GST registration.

5. Show Cause Notice dated 18.11.2021 was issued to the petitioner seeking to cancel its registration on the ground *“Collects any amount as representing the tax but fails to pay the same to the account of the Central”*. However, no details were mentioned in the Show Cause Notice about the tax collected but not deposited. Further, said Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, petitioner had no opportunity to even object to the retrospective cancellation of the registration.

6. Learned counsel for petitioner submits that due to certain business reasons the Petitioner shifted its office to Noida- Uttar  
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Pradesh starting from August 2021 and possessed the registration certificate of the same.

7. Further, he submits that the Petitioner has filed his returns till 30.11.2021 and thereafter, no business has been carried from the registered office in Delhi.

8. The impugned order dated 10.06.2022 passed on the Show Cause Notice dated 18.11.2021 does not give any reasons for cancellation. It, however, states that the registration is liable to be cancelled for the following reason “*whereas no reply to the show cause notice has been submitted*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 06.05.2022 in response to the notice to show cause dated 18.11.2021*” and the reason stated for the cancellation is “*whereas no reply to notice show cause has been submitted*”. The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date.

9. In our view, order dated 10.06.2022 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. The Show Cause Notice and the impugned order are also bereft of any details and accordingly the same cannot be sustained. Further,



neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation.

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. 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.

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

14. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 10.06.2022 is modified to the limited extent that registration shall now be treated as cancelled with effect from 30.11.2021 i.e., the period upto which the Petitioner has filed its GST returns. Petitioner shall comply with the requirements of Section 29 of the Central Goods and Services Tax Act, 2017.

15. 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 in respect of the subject firm in accordance with law including retrospective cancellation.

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

**SANJEEV SACHDEVA, J**

**RAVINDER DUDEJA, J**

**MARCH 04, 2024/NA**