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

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Date of decision: 14.03.2024

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W.P. (C) 12823/2023 & CM APPL. 50504/2023

RR BALAJI AD

..... Petitioner

versus

COMMISSIONER OF SGST DELHI & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Shailender Verma, Mr. Shubham Chandra Gupta, Mr. Ravi Mohan Gupta, Mr. Praveen Goel and Mr. Ashok Kumar, Advocates.

For the Respondent: Mr. Rajeev Aggarwal, Additional Standing Counsel

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 20.03.2023 whereby the appeal of the Petitioner seeking restoration of the GST registration has been dismissed solely on the ground that the same is barred by limitation. Petitioner also impugns order dated 19.04.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017 and also impugns Show Cause Notice dated 24.01.2022.



2. Vide Show Cause Notice dated 24.01.2022, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

“Non-compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed”.

3. Petitioner is engaged in the business of printing of newspapers, journal's and periodicals whether or not illustrated or containing advertising materials and other journals and periodicals and possessed GST Registration.

4. Show Cause Notice dated 24.01.2022 was issued to the petitioner. Though the notice does not specify any cogent reason, it merely states *“Non compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed”*. Further, the said Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Thus, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

5. Further, the impugned order dated 19.04.2022 passed on the Show Cause Notice dated 24.01.2022 does not give any reasons for cancellation. It, however, states that the registration is liable to be cancelled for the following reason *“The taxpayer has not responded to the notices issued u/s 61 of GST Act.”*. The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date.



6. In our view, the order dated 19.04.2022 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.

7. We notice that the Show Cause Notice and the impugned order are bereft of any details accordingly the same cannot be sustained. Neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation.

8. 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.

9. 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.

10. In view of the aforesaid, order dated 19.04.2022 cannot be sustained and is accordingly set aside. The GST registration of the petitioner is restored. Normally, this Court would have remitted the matter for re-consideration, however, in view of the peculiar facts as noticed hereinafter, we are not exercising the power of remit and are taking up the request of the petitioner for restoration in these proceedings itself. The 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.

11. 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 of the GST registration.

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

SANJEEV SACHDEVA, J



RAVINDER DUDEJA, J

MARCH 14, 2024*/vp*