



\$~1

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

%

Date of Decision: 20th July, 2023+ **W.P.(C) 6652/2023****ASHISH GARG PROPRIETOR SHRI
RADHEY TRADERS**

..... Petitioner

Through: Mr. Abhishek Garg, Mr. Yash
Gaiha and Mr. Ranesh
Mankotia, Advs.

versus

**ASSISTANT COMMISSIONER OF STATE
GOODS AND SERVICE TAX DELHI
ZONE 7 WARD 82**

..... Respondent

Through: Mr. Rajeev Aggarwal, Adv.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J.**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 22.07.2021, passed by the Adjudicating Authority, cancelling the petitioner's GST registration with retrospective effect from 02.07.2017.
2. The petitioner had registered himself with the GST authorities with effect from 01.07.2021 (GST registration no. 07AREPG3294K1ZL).
3. The petitioner claims that some time in June, 2019, he decided



to discontinue his business as he was suffering from various medical issues. Accordingly, on 20.07.2019, the petitioner filed the application for cancellation of his GST registration.

4. It is the petitioner's case that the respondent took no immediate steps to process the said application and the same remained pending for a considerable time. On 23.03.2020, the respondents issued a notice seeking additional documents for processing the petitioner's application filed on 20.07.2019, for cancellation of his GST registration. Thereafter, the concerned officer passed an order rejecting the petitioner's application for cancellation of his GST registration.

5. The petitioner became aware of the same on 05.06.2020 and on the very same date, filed another application (ARN no. AA070620007093S), once again requesting the respondent to cancel his GST registration with effect from 30.06.2019. This application was also dealt in a similar manner: the respondent did not act on the same for almost nine months and, thereafter on 24.03.2021, issued another notice seeking additional information from the petitioner.

6. It is the petitioner's case that since almost two years had elapsed since he had closed his business, the information as sought was not readily available and he could not reply to the said notice within the time as provided. On 28.06.2021, the concerned authority passed an order rejecting the petitioner's application for cancellation of his registration.

7. The petitioner is aggrieved by the said orders rejecting his application for cancellation of his registration.



8. Thereafter on 30.06.2021, the respondent issued a Show Cause Notice calling upon the petitioner to show cause as to why his registration should not be cancelled on the ground that he had not filed returns for a continuous period of six months. In terms of the said Show Cause Notice, the petitioner's registration was also suspended with effect from 30.06.2021.

9. Pursuant to the aforesaid Show Cause Notice, the Adjudicating Authority cancelled the petitioner's GST registration by an order dated 22.07.2021 albeit, with retrospective effect from 02.07.2017. The said order also included a tabular statement indicating that no tax is recoverable from the petitioner.

10. Aggrieved by the retrospective cancellation of the GST registration, the petitioner filed an application dated 12.04.2023 for revocation of the cancellation of his registration. This application was allowed and the petitioner's GST registration was restored.

11. It is apparent from the above that the petitioner's grievance remains unaddressed. The effect of cancellation of GST registration from a retrospective date has a cascading effect inasmuch as the concerned authorities would also deny the Input Tax Credit to other tax payers, who had received supplies from the petitioner.

12. In the present case, there is no material on record to justify such retrospective cancellation of GST registration by the Adjudicating Authority. As noted hereinbefore, the reason for proposing cancellation of petitioner's GST registration as stated in the Show Cause Notice dated 30.06.2021 is non filing of returns; thus, absent any other reason, the retrospective cancellation cannot extend to



include the period for which returns were filed by the petitioner.

13. There is no dispute that the petitioner had regularly filed his returns till 30.06.2019. Although in terms of Section 29 of the Central Goods and Services Tax Act, 2017, the concerned authority has the discretion to cancel the registration from a retrospective date, however, the said power cannot be exercised arbitrarily.

14. The fact that the petitioner had not filed the returns for a continuous period of six months – the ground on which cancellation was proposed in terms of the Show Cause Notice dated 30.06.2021 – does not, in any manner, justify retrospective cancellation from the date that the registration was granted.

15. As noticed above, it is the petitioner's case that he had ceased carrying on his business from June, 2019. Clearly, in view of the said stand, the petitioner cannot be asked to file returns for the period after he had closed down his business. Although several rounds of proceedings have been held in this case, we find that the concerned authority has not applied its mind to the petitioner's assertion that he closed his business in June, 2019.

16. It is apparent that the orders passed by the Adjudicating Authority have been passed belatedly and in a mechanical manner.

17. Considering the peculiar facts and circumstances of this case, we direct the concerned authorities to, on the strength of this order, process the petitioner's application for cancellation of his registration with effect from 30.06.2019. This is subject to the petitioner providing any information relating to the period prior to 30.06.2019, if the concerned authorities require the same.



18. We also clarify that the concerned authorities are not precluded from taking any other action if it is found that the petitioner was carrying on his business beyond 30.06.2019 and has violated any statutory provisions.

19. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J



AMIT MAHAJAN, J

JULY 20, 2023

'KDK'