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

% *Date of Decision:* 11.12.2023

+ **W.P.(C) 15867/2023 & CM APPL. 63826/2023 & CM APPL. 63827/2023**

SAROJ GAGNEJA

..... Petitioner

Through: Ms. Shreya Gagneja & Mr.  
Harish Kumar, Advs.

versus

ASSISTANT COMMISSIONER OF STATE GOODS AND  
SERVICES TAX DELHI

..... Respondent

Through: Mr. Rajeev Aggarwal, ASC  
with Ms. Samridhi Vats, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**VIBHU BAKHRU, J.**

1. Issue notice.
2. Mr. Aggarwal, learned counsel appearing for the respondent accepts notice.
3. The petitioner has filed the present petition impugning an order dated 21.10.2021 (hereafter '**the impugned order**'), whereby the petitioner's GST registration was cancelled with retrospective effect.
4. The petitioner was registered with the GST authority with effect from 01.07.2017. The petitioner claims that she was carrying on the business under the name of 'M/s S. S. Enterprises' and was assigned



Goods and Service Tax Identification Number (GSTIN): 07AEWPG7338F1Z4. The petitioner claims that she discontinued the business in January, 2020 and filed an application dated 17.01.2020 praying that her GST registration be cancelled with effect from the said date. The respondent did not act on the said request for over six months. However, on 19.07.2020, the concerned officer of GST department issued a notice seeking certain clarification in respect of the petitioner's cancellation application.

5. The petitioner claims that she replied to the said queries on 27.07.2020, however, despite responding to the said notice, the respondent did not take any immediate step for cancelling the petitioner's GST registration. The petitioner's application for cancellation of her GST registration was rejected by an order dated 20.09.2021. The only reason indicated in the order dated 20.09.2021 for rejecting the petitioner's application for cancellation reads as: 'DOCUMENTS NOT SHOW ON PORTAL'.

6. Thereafter, the proper officer issued a show cause notice dated 08.10.2021 (hereafter '**the SCN**'), proposing to cancel the petitioner's GST registration for the following reasons: -

“1 Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months”

7. The petitioner was called upon to respond to the SCN within a period of seven working days and to appear before the concerned officer for personal hearing “on the appointed date and time”, failing which the petitioner was cautioned that her case would be decided *ex-parte*.



Additionally, the petitioner's GST registration was suspended with effect from the date of the SCN, that is, – 08.10.2021.

8. Thereafter, the proper officer passed the impugned order cancelling the petitioner's GST registration with retrospective effect from 01.07.2017. The impugned order does not indicate any reason for cancelling the petitioner's GST registration except mentioning that no reply has been received to the SCN.

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. In the present case, the petitioner had indicated that she closed her business in January, 2020. Thus, not filing returns, thereafter, cannot be a ground to cancel her registration in respect of the period while she was carrying on the business in compliance with the provisions of the law.

12. As noted above, the SCN proposing to cancel the petitioner's GST registration is flawed. Although, it directed the petitioner to appear for a personal hearing on the appointed date and time but it failed to specify the said date, time, or venue. The impugned order cancelling the petitioner's GST registration is also liable to be set aside as it is bereft of any reason. It neither specifies the reason for cancelling the GST registration nor gives any clue as to why it was cancelled with retrospective effect.

13. In view of the above, we consider it apposite to allow the present petition and direct that the cancellation of the petitioner's GST registration shall take effect from 17.01.2020, being the date of the application filed by the petitioner seeking cancellation of her GST registration.

14. It is clarified that this order would not preclude the respondent from initiating any steps in accordance with the law, if it is found that



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the petitioner had violated any provisions of the Act prior to 17.01.2020.

15. The petition is allowed in the aforesaid terms. All pending applications are also disposed of.



**VIBHU BAKHRU, J**

**AMIT MAHAJAN, J**

**DECEMBER 11, 2023/Ch**