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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 24.01.2024

+ **W.P.(C) 1103/2024 & CM APPLs. 4630-31/2024**

POLYTEC INDUSTRIES THROUGH ITS PROPRIETOR MR.

ROHIT GUPTA.

.... Petitioner

versus

COMMISSIONER OF DELHI GOODS AND SERVICES TAX AND

OTHERS

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Rakesh Kumar, Advocate.

For the Respondent:

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 in appeal dated 11.01.2024 whereby the appeal filed by the Petitioner has been dismissed solely on the ground of limitation. Petitioner filed the appeal impugning order dated 12.09.2020 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns order dated 05.06.2020, whereby the application for cancellation of GST registration was rejected and also impugns Show



Cause Notice dated 01.09.2020.

2. Vide Show Cause Notice dated 01.09.2020, petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-

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

3. Petitioner was the proprietor of M/s Polytec Industries and was in business of manufacturing and trading of Plastic products and was registered under Goods and Services Tax Act, 2017.

4. Petitioner claims to have shifted his business to Bhiwadi and therefore submitted an application for Cancellation of Registration Certificate on ground of discontinue of business with effect from 01.02.2019.

5. Pursuant to the said application, notice was given to the Petitioner on 17.03.2020 seeking additional information and documents relating to application for cancellation of registration. On account of non apply of the said documents, order dated 05.06.2020 was passed rejecting the application for cancellation.

6. Thereafter, subject show cause notice dated 01.09.2020 was issued to the petitioner with an observation in the notice stating “failure to furnish returns for a continuous period of six months”.

7. It may be noticed that the impugned order dated 12.09.2020



states that the registration is liable to be cancelled for the following reason “*whereas no reply to notice to show cause has been submitted*”. The order also seeks to cancel the registration with retrospective effect from 01.07.2017. However, there is no material on record to show as to why the registration is sought to be cancelled retrospectively.

8. The Show Cause Notice dated 01.09.2020 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.

9. Records clearly demonstrate that the Petitioner had submitted an application seeking cancellation of the GST registration on 08.05.2019 and thereafter, vide order dated 12.09.2020, the registration of the Petitioner had been cancelled. We note that the cancellation of registration has been done with retrospective effect.

10. 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. 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.

11. 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.

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 01.02.2019, i.e., the date on which the petitioner discontinued the business.

13. However, the petitioner shall furnish all requisite details to the respondents as required to be submitted by the petitioner in respect of letter dated 07.03.2020 to enable the respondents to ascertain if any demand is liable raised against the petitioner.

14. 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 from the petitioner in accordance with law.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

January 24, 2024/vp

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