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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 05.01.2024

+ **W.P.(C) 143/2024 & CM APPL. 639/2024**

M/S RADHEY TRADING COMPANY

..... Petitioner

versus

PRINCIPAL COMMISSIONER OF GOODS AND
SERVICES TAX, NORTH DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Pranay Jain and Mr. Karan Singh, Advocates.

For the Respondent: Mr. Gibran Naushad, Senior Standing Counsel

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks quashing of show cause notice dated 10.07.2023 and cancellation order dated 25.08.2023 cancelling the registration of the petitioner with retrospective effect.
2. Issue notice. Notice is accepted by learned counsel appearing



for the respondent.

3. Since the facts are not in dispute with the consent of the parties, the petition is taken up for final disposal today.

4. Petitioner obtained a GST registration on 12.05.2022 and claims to be a supplier of plastic granules and PVC Dana.

5. The subject show cause notice dated 10.07.2023 was issued to the petitioner seeking cancellation of the registration of the petitioner on the ground “1. Section 29(2)(e)-registration obtained by means of fraud, wilful misstatement or suppression of facts”.

6. Petitioner was directed to appear before the undersigned of the show cause notice on 17.07.2023 and also to furnish a reply within seven (7) days.

7. Subsequently, a cancellation order dated 25.08.2023 has been passed cancelling the registration of the petitioner retrospectively with effect from 13.05.2022.

8. Perusal of the show cause notice dated 10.07.2023 shows that the reasons mentioned for seeking to cancel the registration is reproduction of Section 29(2) (e) of the Goods & Services Tax Act, 2017.

9. The authority has verbatim copied the provision of the Section which states that the authority may cancel the registration, if



registration has been obtained by means of fraud or willful mis-statement or suppression of facts.

10. The show cause notice does not specify as to in which category the case of petitioner falls i.e. fraud, willful mis-statement or suppression of facts. There are no details of any alleged fraud, willful mis-statement or suppression of facts in the show cause notice.

11. Show cause notice further requires the petitioner to appear before the undersigned of the notice on 17.07.2023. However, the show cause notice does not even have the name, designation or office of the issuing authority who could be treated as the undersigned before whom the petitioner would have had to appear on 17.07.2023.

12. The show cause notice is completely bereft of any detail. Further the show cause notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively.

13. The order of cancellation of registration dated 25.08.2023 refers to the show cause notice dated 10.07.2023 and then states that the effective date of cancellation is 13.05.2022. There are no reasons mentioned in the order. The order is completely bereft of any reasoning, details or discussion and simply is a cryptic one line order that the effective date of cancellation is 13.05.2022.

14. In view of the above, neither the show cause notice nor the order of cancellation are sustainable.



15. Learned counsel for the respondent submits that the online portal which is accessible to the assessee gives the details and reasons in support of the show cause notice as well as the order of cancellation.

16. When the authority issues a show cause notice and an order of cancellation, the show notice and order of cancellation should be self contained and should contain the requisite details and allegations. Once the assessee receives a show cause notice, the assessee should not be required to visit any other website or portal to ascertain the reasons for the show cause notice or order of cancellation. Further we may note that neither the show cause notice nor the order impugned herein specify that the assessee has to visit the portal to find out the reasons for the show cause notice or the order of cancellation.

17. Learned counsel for the respondent further submits that though the reasons are mentioned in the online portal but the same are not reflected in the show cause notice or the order of cancellation.

18. The authorities are directed to rectify the error in the portal so that the show cause notice or the order are self contained and assessee do not need to visit any other portal for determining the reasons thereof. Further in case there is any requirement of visiting the online portal, the notice or the order as to case may be, should clearly



indicate that the assessee has to visit the portal for further details or clarification.

19. The contention of the respondent for holding that the registration has been obtained by fraud, willful mis-statement and suppression of facts is that the Inspector had submitted a report that the address of the assessee is not traceable.

20. Learned counsel for the petitioner submits that the petitioner is very much existing at the address at which the firm has been registered and is even present today. He submits that the petitioner has requested the authority to re-visit the premises to ascertain as to whether the address is existing or not. He submits that such a request was made on 17.07.2023 and till date no officer has visited the premises of the petitioner. He submits that an application seeking revocation of cancellation was filed as far back as on 13.09.2023 and till date has not been decided.

21. Learned counsel for the respondent submits that the next date of hearing before the concerned authority on the application for revocation of cancellation is 11.01.2024.

22. Since we have held that the show cause notice and the order of cancellation are bereft of any details and are not sustainable, no purpose would be served in awaiting the outcome of the hearing on the application for revocation of cancellation. Since the very



foundation of the proceedings i.e. show cause notice, is defective, further proceedings thereon shall be vitiated.

23. 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.

24. 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.

25. In view of the above, the impugned show cause notice dated 10.07.2023 and the order of cancellation dated 25.08.2023 are set aside. Petition is allowed in the above terms.

26. It would be, however, open to the respondent to take further action in accordance with law *inter alia*, cancellation of registration with retrospective effect. However, the same would be in accordance with law and pursuant to a proper Show Cause Notice and an opportunity of hearing being given to the petitioner.

SANJEEV SACHDEVA, J

JANUARY 05, 2024
'rs'

RAVINDER DUDEJA, J

