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

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Date of decision: 22.01.2024

+ **W.P.(C) 381/2024****MANISHA GUPTA PROP VARUN ENTERPRISES.....** Petitioner

versus

**UNION OF INDIA THROUGH SECRETARY MINISTRY OF
FINANCE & ORS** Respondents**Advocates who appeared in this case:**For the Petitioner: Mr. A. K. Babbar, Mr. Surinder Kumar & Mr. Rahul
Chouhan, Advocates.For the Respondent: Mr. Shashank Sharma, Senior Standing Counsel for R-
2 & 3.**CORAM:-****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)****CM APPL. 4034/2024 (U/s 151 CPC filed by petitioner to place on
record copy of acknowledgement of withdrawal of
appeal/application vide No. AD0710230160302 dated 12.12.2023)**

1. For the reasons stated in the application, the application is allowed. The Document is taken on record.

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1. Petitioner impugns order dated 07.10.2022, whereby the GST registration of the petitioner has been cancelled retrospectively with effect from 02.07.2017 and also impugns the Show Cause Notice



dated 23.09.2022.

2. Vide Show Cause Notice dated 23.09.2022, 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 in the business of purchase and sale of Surgical Goods and Trading goods and was registered under the Goods and Services Tax Act, 2017. Petitioner claims to have stopped the business on 28.01.2019 and submitted an application on 03.08.2022 seeking cancellation of registration. Pursuant to the said application, notice was given to the Petitioner on 04.08.2022, seeking additional information and documents relating to application for cancellation of registration. As per the Petitioner, she could not submit the required information as she did not have regular business and could not look up the portal. Pursuant, to non-supply of the said documents order dated 16.08.2022 was passed rejecting the application for cancellation filed by the Petitioner.

4. Further, the show cause notice issued to the petitioner on 23.09.2022 does not specify any cogent reason, there is an observation in the notice stating “failure to furnish returns for a continuous period of six months”.



5. Further, the impugned order dated 07.10.2022 states that the registration is liable to be cancelled for the following reason “*no response received from the taxpayer*”. It seeks to cancel the registration with effect from 02.07.2017. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

6. Further, the Show Cause Notice dated 23.09.2022 also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

7. Records clearly demonstrates that petitioner had submitted an application seeking cancellation of the GST registration on 03.08.2022 and thereafter, vide order dated 07.10.2022, the registration of the petitioner had been cancelled. We note that the cancellation of registration has been done with retrospective effect.

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. 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 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.

10. During the hearing an affidavit has been handed over by learned counsel for the Petitioner in Court wherein, it is stated that petitioner has not carried out any business since last Sale Invoice which was issued on 28.01.2019. Further, the learned counsel for the petitioner submits that Petitioner has filed GST returns till March, 2021.

11. Further, in the affidavit petitioner has undertaken to file all the statutory returns pending under the GST till order of cancellation and also to discharge any liabilities on account of tax, interest and late fees



within two weeks of opening up of the portal enabling the petitioner to make necessary compliances. The affidavit is taken on record. Petitioner is bound down to the affidavit.

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 28.01.2019, i.e., the date on which the petitioner is alleged to have last carried on business.

13. It is clarified that respondents are 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

January 22, 2024/sk

