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

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Date of decision: 12.02.2024

+ **W.P.(C) 1986/2024**

M/S DASHMESH WIRES AND CABLES
(INDIA)

..... Petitioner

versus

COMMISSIONER OF GST & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Nikunj Puri, Advocate.

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 dated 29.01.2021, whereby, the GST registration of the petitioner has been cancelled retrospectively w.e.f 01.07.2017 and also impugns Show Cause Notice dated 13.01.2021.



2. Vide Show Cause Notice dated 13.01.2021, 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 working in the name of M/S Dashmesh Wires and Cables (India), at B-11/3C, Jhilmil Industrial Area, East Delhi, Delhi 110095 which is a proprietorship Firm which is run by Sh. Uttam Singh and engaged in manufacturing of cooper wire and cables. Petitioner claims to have been regularly filing GST returns with the Department and properly claimed input tax credit (ITC) as shown in the Designated Web-site of the GST Portal.

4. Petitioner claims to have closed down his business activities and vacated the said rented premises. Therefore, he submitted an application dated 03.04.2020 for Cancellation of Registration Certificate with effect from 31.03.2020.

5. Pursuant to the said application, order dated 05.11.2020 was issued to the Petitioner rejecting the application for cancellation. Perusal of the order shows that the same does not give any reasons it merely states *“your application is rejected in accordance with the provisions of the Act.”*



6. Thereafter a Show Cause Notice dated 13.01.2021 was issued to the Petitioner seeking to cancel its registration. The Show Cause Notice dated 13.01.2021 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. The GST registration of the Petitioner was cancelled by order dated 29.01.2021, however, the said order does not give any reasons for cancellation of the registration. It merely states that the registration is liable to be cancelled for the following reason “*whereas no reply to notice to show cause has been submitted*”.

8. The said order in itself is contradictory. The order states, “reference to your reply dated 22.01.2021 to the Show Cause Notice dated 13.01.2021” and reason stated for cancellation is “*whereas no reply to notice to show cause has been submitted*”. The order further seeks to cancel the registration with retrospective effect from 01.07.2017. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

9. Neither the show cause notice nor the order spell out the reasons for cancellation. In fact, in our view, order dated 29.01.2021 does not qualify as an order of cancellation of



registration. On one hand, it states that the registration is liable to be cancelled and on the other, in the column at the bottom there are no dues stated to be due against the petitioner and the table shows nil demand.

10. Records clearly demonstrates that petitioner had submitted an application seeking cancellation of the GST registration on 03.04.2020 and thereafter, vide show cause notice dated 13.01.2021, the registration of the petitioner had been suspended with effect from 13.01.2021. Once the registration stood suspended, there was no cause for the petitioner to file any returns. Accordingly, the cancellation of the registration on the ground that petitioner has failed to file returns is not sustainable. Further, we note that the cancellation of registration has been done with retrospective effect.

11. 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.

12. 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.

13. It may be further noted that both the Petitioners and the department want cancellation of the GST registration of the Petitioner, though for a different reason.

14. 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 31.03.2020, i.e., the date on which the petitioner discontinued business.

15. 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 12, 2024/sk

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