



\$~24

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

%

Date of decision: 19.03.2024

W.P.(C) 2416/2024

M/S VEETRAG TRADERS

..... Petitioner

versus

THE COMMISSIONER OF SGST DELHI
& ORS.

.....Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Vibhas Kumar Jha, Mr. Rajat Pandey and
Ms. Manju Pandey, Advocates.

For the Respondents: 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 20.03.2023 whereby the appeal of the Petitioner seeking restoration of the GST registration has been dismissed solely on the ground that the same is barred by limitation. Petitioner also impugns order dated 13.08.2020 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017 and also impugns Show Cause Notice dated 13.08.2020.



2. Vide Show Cause Notice dated 13.08.2020, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

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

3. Petitioner is a trading firm and is engaged in the business of selling of craft paper and possessed GST registration.

4. Petitioner had submitted an application seeking cancellation of GST registration dated 01.10.2019 on the ground of closure of business.

5. Pursuant to the said application, notice was given to the Petitioner on 11.04.2020 seeking additional information and documents relating to application for cancellation of registration. On account of unsatisfactory reply, order dated 16.06.2020 was passed rejecting the application for cancellation merely stating *“Application rejected in accordance with the provisions of the Act”*.

6. Thereafter, Show Cause Notice dated 18.02.2021 was issued to the petitioner. Though the notice does not specify any cogent reason, it merely states *“Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months”*. Further, the said Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Thus, the



petitioner had no opportunity to even object to the retrospective cancellation of the registration.

7. Thereafter, the impugned order dated 29.11.2020 passed on the Show Cause Notice also does not give any tenable reasons of cancellation. It merely states that the registration is liable to be cancelled for the following reason “*whereas no reply to notice to show cause notice has been submitted*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 23/08/2020 in response to the notice to show cause dated 13/08/2020*” and the reason stated for the cancellation is “*whereas no reply to notice to show cause has been submitted*”. The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date.

8. In our view, the order 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.

9. Learned counsel for Petitioner submits that due to loss in business, Petitioner had closed all business activities and asked his consultant to surrender the said GST registration.



10. He further submits that the Petitioner received a notice seeking additional information and documents relating to application for cancellation of registration, however due to Covid-19 pandemic the notice was missed by the Petitioner and his consultant.

11. He further submits that the Petitioner was unaware of the legal proceedings as the consultant of the Petitioner expired due to Corona virus and hence could not file a reply or his GST returns due to lack of knowledge about GST procedure.

12. We notice that the Show Cause Notice and the impugned order are also bereft of any details. Accordingly the same cannot be sustained and neither the Show Cause Notice, nor the order spell out the reasons for retrospective cancellation.

13. In terms of Section 29(2) of the Act, 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.



14. It is important to note that, according to the respondent, one of the consequences for cancelling a taxpayer'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 taxpayer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention is 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.

15. It is clear that both the petitioner and the respondent want the GST registration to be cancelled, though for different reasons.

16. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 29.11.2020 is modified to the limited extent that registration shall now be treated as cancelled with effect from 01.10.2019 i.e., the date when Petitioner applied for cancellation of GST registration. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.

17. It is clarified that Respondents are not precluded from taking any steps for recovery of any tax, penalty or interest that may be due



in respect of the subject firm in accordance with law including retrospective cancellation of the GST registration.

18. Petition is accordingly disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 19, 2024/SK

