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

% Date of decision: 11.03.2024 + **W.P.(C) 3597/2024**

KRISHAN MOHAN ..... Petitioner versus

COMMISSIONER OF GST

AND ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Prince Mohan Sinhaa, Mr. Rajeev Deora and Mr. Manish Jain, 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 31.07.2019 whereby the GST registration of the Petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated

17.07.2019.

2. Vide Show Cause Notice dated 17.07.2019, 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. Subject petition has been filed by Sh. Praphul Mohan Aggarwal, legal heir of Late Sh. Krishan Mohan, who was registered under the Goods and Service Act, 2017 (hereinafter referred to as 'the Act').

4. A show cause notice dated 17.07.2019 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*".

5. Further, the impugned order dated 31.07.2019 passed on the Show Cause Notice dated 17.07.2019 does not give any reasons for cancellation. It, however, states that the registration is liable to be cancelled for the following reason "*whereas no reply to the show cause notice has been submitted; whereas on the day fixed for hearing you did not appear*". However, the said order in itself is contradictory. The order states "*reference to your reply dated 26.07.2019 in response to the notice to show cause dated 17.07.2019*" and the reason stated for the cancellation is "*whereas no reply to notice show cause has been submitted; whereas on the day fixed for hearing you did not appear*". The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 31.07.2019 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.

7. Learned counsel for the Petitioner submits that Sh. Krishan Mohan passed away on 14.03.2018. He further submits that the petition has been filed by Mr. Praphul Mohan Aggarwal, son of Late Mr. Krishan Mohan, who had the GST registration.

8. He further submits that after the death of Mr. Krishan Mohan the business was closed down and, thereafter, Mr. Praphul Mohan Aggarwal i.e., his son is carrying on a different business and is looking after the subject business for its closure and has not carried out any business in the name and style of the proprietorship concern of Late Shri Krishan Mohan.

9. 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.

10. 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 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.

11. We may also note that the Show Cause Notice did not put the noticee to notice that registration was liable to be cancelled retrospectively.

12. 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.

13. In view of the above facts that Petitioner does not seek to carry on business or continue with the registration, the impugned order dated 31.07.2019 is modified to the limited extent that registration shall now be treated as cancelled with effect from 14.03.2018 i.e., the date when Sh. Krishan Mohan passed away. Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.

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

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 11, 2024

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