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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 18.01.2024

+ W.P.(C) 628/2024 & CM APPLS 2749/2024, 2748/2024ARYAN TIMBER STORE THROUGH ITS PROP VIRENDER
KUMAR

..... Petitioner

versus

SALES TAX OFFICER CLASS II/ AVATO WARD 62
DEPARTMENT OF TRADE AND TAXES IP ESTATE NEW
DELHI

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Gaurav Gupta, Advocate.

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 09.07.2022, whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017 and also impugns the Show Cause Notice dated 15.07.2021.

2. It is submitted that petitioner discontinued his business w.e.f 31.03.2019 and applied for cancellation on 06.05.2019. Vide Show Cause Notice dated 15.07.2021, 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. We may note that though the Show Cause Notice states that petitioner failed to file the returns for a continuous period of six months.

4. The impugned order also seeks to cancel the registration with effect from 01.07.2017. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

5. Further, the Show Cause Notice dated 15.07.2021 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.

6. Records clearly demonstrates that petitioner had submitted an application seeking cancellation of the GST registration on 06.05.2019 and thereafter, vide order dated 09.07.2022, the registration of the petitioner had been cancelled. Once the registration stood cancelled, 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.



7. 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.

8. 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.

9. 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 06.05.2019, i.e., the date when petitioner first applied for cancellation of registration. 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.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

January 18, 2024/sk

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