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

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Date of decision: 03.01.2024

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W.P.(C) 16189/2023 & CM APPL. 65071/2023

**MS RS WIRES INDUSTRIES THROUGH
PROPRIETOR RAJENDER SINGH**

..... Petitioner

versus

**SALES TAX OFFICER CLASS
II AVATO WARD 63 ZONE 6 DELHI**

..... Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. R. P. Singh & Ms. Priyanka Goel, Advocates.

For the Respondents:

Mr. Rajeev Aggarwal 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 show cause for cancellation dated 18.04.2022 and the orders of rejection and applications for revocation of cancellation dated 30.08.2023.

2. Learned counsel for the petitioner submits that show cause notice issued under Section 29 of the Goods and Services Tax Act, 2017 [‘the Act’] was itself defective as it did not give any details of the alleged wrongful availment or utilization of input tax credit.



3. Learned counsel submits that show cause notice dated 18.04.2022 did not give any details, however, mentions that the details were enclosed and submits that what was enclosed with the show cause notice was a mere photograph of an unknown individual. He submits that revocation applications were filed, however, the same have been rejected by orders dated 27.04.2022 and 28.06.2023, and all of which do not contain any reasons. Even order dated 30.08.2023 merely states that the reply of the petitioner has been examined but the same has not been found to be satisfactory for the reasons “the reason entered for revocation of cancellation is not appropriate”.

4. Issue notice. Notice is accepted by learned counsel for the respondent. With the consent of learned counsel for parties, the petition is taken up for hearing today.

5. The show cause notice dated 18.04.2022 seeking cancellation of registration gives the following reasons:-

“Wrongful availment or utilization of Input Tax Credit (details notice enclosed).”

6. It is not disputed that what was enclosed with the show cause notice were not any details but a photograph of an individual, which is appended to the petition at page 44.

7. The show cause notice *ex facie* is defected as the same does not contain any details quantum of wrongful availment of Input Tax Credit or any refund claimed on the said account or reasons. Reference



may be made to the judgment of a coordinate Bench of this Court in *Infinity Infomatic Pvt Ltd vs. CGST, Delhi* [2023 (11) CENTAX 263 (Del.)

8. Further, we may note that the order of cancellation of registration dated 18.04.2022 makes a reference to a reply of the petitioner dated 27.04.2022 and then states that no reply to show cause notice has been submitted. Further, order dated 28.06.2023 rejecting the application for revocation of cancellation also states that no reply has been received within time.

9. Neither the show cause notice nor the orders rejecting the revocation application contain any details or reasons. There is nothing available on record either in the show cause notice or the orders as to the alleged wrongful availment or utilization of input tax credit. On this ground alone, the show cause notice as well as the application seeking revocation are not sustainable.

10. 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. There is no material to show that there was any wrongful availment or utilization of input tax credit effective from the date of registration till the issuance of the show cause notice.

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. The 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. Consequently, the show cause notice and the impugned orders are quashed being bereft of requisite details and reasons. The petition is allowed. However, respondent is given liberty to initiate appropriate



proceedings in accordance with law after giving a proper show cause notice containing complete details, if so advised.

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

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

January 03, 2024/vp

HIGH COURT OF DELHI



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