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

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Date of decision: 20.02.2024

+ **W.P.(C) 15591/2023 & CM APPL. 62388/2023**

M/S SHUBH BALL BEARINGS COMPANY ..... Petitioner

versus

THE ASSISTANT COMMISSIONER ..... Respondent

**Advocates who appeared in this case:**

For the Petitioner: Mr. Mr. Jaikumar, Mr. Kartik Jindal & Mr. Parmeet Singh, Advocates

For the Respondents: Mr. Gibran Naushad, Senior Standing Counsel, CBIC

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**JUDGEMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner seeks direction to respondent to cancel the GST registration of the petitioner with effect from 01.02.2021 and impugns order dated 20.05.2021 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 31.10.2017. Further,



petitioner impugns orders dated 19.03.2021 and 06.06.0223 whereby the application for cancellation of GST registration and application for revocation of cancellation respectively were rejected. Petitioner also impugns Show Cause Notice dated 19.03.2021.

2. Petitioner was the proprietor of M/s Shubh Ball Bearings Company and was in business of import of cycle and its parts possessed GST registration.

3. Record clearly demonstrates that Petitioner had submitted an application seeking Cancellation of Registration Certificate on 09.03.2021 on ground of discontinuation of business with effect from 01.02.2021.

4. Pursuant to the said application, notice was issued by the respondent on 10.03.2021 seeking additional information and documents relating to application for cancellation of registration stating “*Cancellation Details - Others (Please specify) - From the returns it is observed that you have availed disproportionately large amount of ITC and made a short payment of tax of 7041/- So, please clarify the same and provide necessary records.*”

5. Learned counsel for petitioner submitted that the petitioner had no knowledge about the said notice sent by the respondents seeking



further documents and accordingly, could not respond to the same.

6. Learned counsel for respondent submitted that on account of a system error, only a sum of Rs. 7041/- has been noticed in order dated 10.03.2021. However, as per the department, a sum of over Rs. 8 lakhs is recoverable from the petitioner for wrongful claim of Input Tax Credit.

7. The application of the petitioner seeking cancellation was rejected vide order dated 19.03.2021 on the ground “*No reply to query received.*”

8. Thereafter, Show Cause Notice dated 19.03.2021 was issued to the petitioner on the ground that “*Issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax.*”

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

10. Pursuant to the said show cause notice, an impugned order dated 20.05.2021 was passed wherein the registration of the Petitioner



was retrospectively cancelled.

11. It may be noticed that the impugned order dated 20.05.2021 states that the registration is liable to be cancelled for the following reason “*No response to scn received. Liability will be calculated at the time of production of records.*” We may note that the order of cancellation of registration dated 20.05.2021 makes a reference to a reply of the petitioner dated 28.03.2021 and then states that no reply to show cause notice has been submitted. The order also seeks to cancel the registration with retrospective effect from 31.10.2017. However, there is no material on record to show as to why the registration is sought to be cancelled retrospectively.

12. Further, Show Cause Notice dated 19.03.2021 and order dated 20.05.2021 do not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, petitioner had no opportunity to even object to the retrospective cancellation of the registration.

13. Learned Counsel for Petitioner submitted that pursuant to the application for revocation of cancellation of GST registration dated 22.04.2023, Show Cause Notice dated 17.05.2023 was issued to the Petitioner whereby it was stated “*Reason for revocation of cancellation- Others (Please specify) - As per verification by Inspector*



*Range-26, No such firm exist at the given address. Another firm, M/s Shree Krishna Tubes (GSTIN:07BROPG4907JJZI) was found at the given address.”* The Show Cause Notice directed the petitioner to furnish a reply within seven working days and required the petitioner to appear before the undersigned i.e. authority issuing the notice. However, the said notice did not given the name of the officer or place or time where the petitioner had to appear.

14. He further submitted that a reply dated 26.05.2023 was sent to the Respondent, however, the application for revocation of cancellation of registration was rejected vide order dated 06.06.2023.

15. We notice that the show cause notice and the order are also bereft of any details accordingly the same cannot be sustained.

16. 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.

17. 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.

18. Records clearly demonstrate that the Petitioner had submitted an application seeking cancellation of the GST registration on 09.03.2021 which was rejected and thereafter, vide order dated 20.05.2021, the registration of the petitioner has been cancelled retrospectively with effect from 31.10.2017.

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



20. 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 01.02.2021, i.e., the date on which the petitioner discontinued business.

21. Respondent shall be at liberty to issue a proper Show Cause Notice to the petitioner with regard to the alleged wrongful claim of Input Tax Credit by the petitioner in accordance with law. Further, petitioner shall also comply with the requirements of Section 29(3) of the Central Goods and Services Act, 2007.

22. 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.

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

**SANJEEV SACHDEVA, J**

**RAVINDER DUDEJA, J**

**FEBRUARY 20, 2024/RM**