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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 24.05.2024

+ W.P.(C)- 6727/2024

SHREE BANKEY BIHARI TARDING COMPANY Petitioner

versus

PRINCIPAL COMMISSIONER OF DEPARTMENT
OF TRADE AND TAXES AND ANR. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Yash Singania, Advocate

For the Respondents: Mr. Anurag Ojha, Sr. SC with Mr. Subham Kumar,
Mr. Kumar Abhishek, Advocates
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 08.04.2024 whereby the appeal of the Petitioner has been dismissed solely on the ground that the same is barred by limitation. Petitioner also impugns order dated 04.10.2019 whereby the GST registration of the Petitioner was



cancelled retrospectively with effect from 31.07.2017 and also impugns Show Cause Notice dated 19.09.2019.

2. Petitioner was the proprietor of M/s Shri Bankey Bihari Trading Company and possessed GST registration bearing number 07AHKPG4710A1ZY under the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'the Act').

3. Show Cause Notice dated 19.09.2019 was issued to the Petitioner seeking to cancel its registration. 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*". Said Show Cause Notice required the petitioner to appear before the undersigned i.e., authority issuing the notice. However, the said Notice did not bear the date and time when the Petitioner was required to appear for personal hearing.

4. 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.

5. Thereafter, the impugned order dated 04.10.2019 passed on the Show Cause Notice dated 19.09.2019 does not give any reasons for cancellation. It merely states that the registration is liable to be



cancelled for the following reason “*Whereas no reply to notice to show cause has been submitted*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 28/09/2019 in response to the notice to show cause dated 19/09/2019*” and the reason stated for 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 31.07.2017 i.e., a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

6. It may be noted that in the impugned order of cancellation, in the column of dues at the bottom there is ‘zero’ amount stated to be due against the petitioner and the table shows nil demand.

7. Learned counsel for Petitioner submits that the petitioner is no longer interested in continuing business and has closed down all business activities since February 2019.

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

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 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.

11. It may be further noted that both the Petitioner and the respondent want cancellation of the GST registration of the Petitioner, though for different reasons.



12. In view of the fact that the Petitioner does not wish to carry on business or continue with the registration, impugned order dated 04.10.2019 is modified to the limited extent that registration shall now be treated as cancelled with effect from 19.09.2019 i.e., the date when Show Cause Notice seeking cancellation of GST registration was issued.

13. 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 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 after issuance of a proper Show Cause Notice and complying with the provisions of natural justice.

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

SANJEEV SACHDEVA, J

MAY 24, 2024
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RAVINDER DUDEJA, J