

2024 (86) G.S.T.L. 135 (Del.)

IN THE HIGH COURT OF DELHI

Sanjeev Sachdeva and Ravinder Dudeja, JJ.

ANSH TELECOM

Versus

COMMISSIONER OF DGST

W.P. (C) No. 5402 of 2024, decided on 16-4-2024

Registration - Cancellation of - Retrospective cancellation - In September, 2021, show cause notice issued to assessee sought to cancel its registration did not specify any cogent reason and merely stated that there was failure to furnish returns for a continuous period of six months - GST registration of assessee was cancelled retrospectively with effect from 1-7-2017 - However, assessee had already closed its business from March, 2021 - Impugned order in itself was contradictory as at one place order stated that reference was made to reply of assessee in response to notice to show cause while as reason for cancellation, it was stated that no reply to notice to show cause notice had been submitted - On one hand, order stated that registration was liable to be cancelled and on other hand, at relevant column no amount was stated to be due against - *HELD* : Merely, because a taxpayer had not filed returns for some period does not mean that taxpayer's registration was required to be cancelled retrospectively also covering period when returns were filed and taxpayer was compliant - Further, impugned notice did not put assessee to notice that registration was liable to be cancelled retrospectively, accordingly, assessee had no opportunity to even object to retrospective cancellation - However, assessee had himself shut business and was not interested to carry on business or continue registration and no application for cancellation of registration had been filed - Since both assessee and GST authority wanted GST registration to be cancelled, though for different reasons, order of cancellation was to be modified to operate with effect from 2-9-2021 i.e., date of issue of notice - Section 29 of Central Goods and Services Tax Act, 2017 - Section 29 of Delhi Goods and Services Tax Act, 2017. *[paras 11 to 16]*

Petition disposed of in favour of assessee

REPRESENTED BY : S/Shri Vineet Bhatia and A. Jaganath Mishra, Advocates, for the Petitioner.

S/Shri Rajeev Aggarwal, ASC with Ms. Shaguftha H. Badhwar, Prateek Badhwar and Ms. Samridhi Vats, Advocates, for the Respondent.

**[Judgment per : Sanjeev Sachdeva, J. (Oral)].** - Petitioner impugns order dated 27-12-2021 whereby the GST Registration of the petitioner was cancelled retrospectively with effect from 1-7-2017 and also impugns Show Cause Notice dated 2-9-2021.

**2.** Issue notice. Notice is accepted by Learned Counsel appearing for respondent. With the consent of the parties, petition is taken up for final disposal today.

3. *Vide* Show Cause Notice dated 2-9-2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason :

“returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017”

4. Petitioner was engaged in the business of trading mobile phones and tablets and possessed GST Registration under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Act).

5. Show Cause Notice dated 2-9-2021 was issued to the Petitioner seeking to cancel its registration. Though the notice does not specify any cogent reason, it merely states “*returns furnished by you under Section 39 of the Central Goods and Services Tax Act, 2017*” along with an observation stating “*failure to furnish returns for a continuous period of six months*”.

6. Said Show Cause Notice required the petitioner to appear before the undersigned *i.e.* authority issuing the notice on 2-10-2021 at 11:00. However, the said Notice does not bear the name of the designation of the officer where the petitioner had to appear. It merely mentions “*Jurisdiction Officer*”.

7. Further, the 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.

8. Thereafter, impugned order dated 27-12-2021 passed on the said Show Cause Notice 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 notice has been submitted*”. However, the said order in itself is contradictory. The order states “*reference to your reply dated 22-12-2021 in response to the notice to show cause dated 2-9-2021*” and the reason stated for cancellation is “*whereas no reply to notice to show cause notice has been submitted*”. The order further states that effective date of cancellation of registration is 1-7-2017 *i.e.*, a retrospective date. There is no material on record to show as to why the registration is sought to be cancelled retrospectively.

9. It may be noted that 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.

10. Learned Counsel for Petitioner submits that on account of financial constraints, Petitioner is no longer continuing the business. The business activities of the Petitioner have been closed down since 31-3-2021. He further submits that Petitioner has filed all returns till March, 2021.

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

12. 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.

**13.** It is important to note that, according to the respondent, one of the consequences for cancelling a taxpayer'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 taxpayer 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 warrant.

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

**15.** In view of the fact that the Petitioner does not seek to carry on business or continue the registration and since no application for cancellation of registration appears to have been filed, the impugned order dated 27-12-2021 is modified to the limited extent that registration shall now be treated cancelled with effect from 2-9-2021 *i.e.*, the date of the issue of the Show Cause Notice.

**16.** Petitioner shall make the necessary compliances as required by Section 29 of the Central Goods and Services Tax Act, 2017.

**17.** 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 giving a proper Show Cause Notice and an opportunity of hearing.

**18.** Petition is accordingly disposed of in the above terms.