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

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Date of decision:16.02.2024

+ **W.P.(C) 2142/2024 & CM APPL. 8905/2024 (Exemption)**

APSHARA GARMENTS PVT. LTD..... Petitioner

versus

COMMISSIONER OF DELHI GOODS AND SERVICE TAX
& ANR..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajesh Mahna, Mr. Ramanand Roy, Mr.
Mayank Kouts & Mr. Shiva Narang,
Advocates

For the Respondent: Mr. Rajeev Aggarwal, ASC.

CORAM:-

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns the order dated 15.01.2024 whereby the GST registration of the petitioner has been cancelled with effect from

03.12.2021.

2. Issue notice.

3. Notice is accepted by learned counsel for the respondents. With the consent of the parties, this petition is taken up for final disposal.

4. Petitioner is engaged in the business of manufacturing and trading of garments and was registered under Goods and Services Tax Act, 2017.

5. As per petitioner, petitioner applied for change of his business premises and accordingly applied for amendment of the registered address on 01.07.2023.

6. Pursuant to the application of the Petitioner, Respondent no. 2 issued a notice dated 03.07.2023 seeking additional information/clarification/documents from the Petitioner.

7. Learned counsel for the 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. Consequently, the application of the petitioner was rejected by order dated 13.07.2023 on the ground “*no reply to the clarification sought has been filed by the taxpayer*”.

8. Thereafter, Show Cause Notice dated 15.09.2023 was issued to the petitioner whereby petitioner was called upon to show cause as to

why the registration be not cancelled for the following reason:-

“Rule 21(b)- person issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made thereunder”.

9. Pursuant to the said show cause notice, an impugned order dated 15.01.2024 was passed wherein the registration of the Petitioner had been cancelled w.e.f 03.12.2021 i.e. retrospectively.

10. Learned counsel for the Petitioner submitted that Petitioner submitted a reply dated 08.01.2024 manually along with required documents i.e., registered rent agreement, ownership proof, the amendment in the registered address carried out by the Registrar of Companies to the proper officer.

11. *Per Contra*, Learned counsel for the respondents submitted that the petitioner failed to respond within time and the response dated 08.01.2024 was belated and as such the same could not be taken into account.

12. We notice that neither the Show Cause Notice dated 15.09.2023 nor the impugned order dated 15.01.2024 give any details of the alleged invoices /bills that have been issued by the petitioner without underlying supply of goods or services. The Show Cause Notice and the impugned order are bereft of any details accordingly the same cannot be sustained.

13. 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.

14. 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.

15. Further, there is no reasoning in the said show cause notice and in the impugned order as to why the cancellation has been done

retrospectively, nor has the petitioner been put to notice that the registration is liable to be cancelled retrospectively.

16. In view of the above, the impugned order dated 15.01.2024 and the Show Cause Notice dated 15.09.2023 are set aside. The GST registration of the petitioner is restored. Petitioner shall comply with Rule 23 and its provisos of Central Goods and Services Tax Rules, 2017.

17. Further the order dated 13.07.2023 rejecting the application of the petitioner seeking amendment of the registered address is also set aside. The matter is remitted to the Proper Officer to reconsider the application of the petitioner for amendment of the registered address in accordance with law.

18. The Proper Officer shall take into account the documents submitted by the petitioner on 08.01.2024. In case, any further documents are required, intimation shall be given to the petitioner qua the same and petitioner shall thereafter furnish the documents to the Proper Officer for adjudication of the application for amendment.

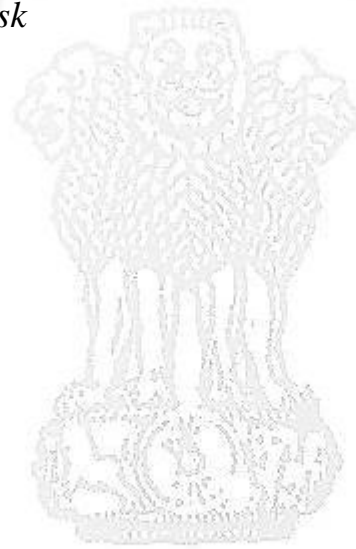
19. It is clarified that respondents are at liberty to take further action in accordance with law and are not precluded from taking any steps for recovery of any tax, penalty or interest that may be due from the petitioner.

20. Petition is disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 16, 2024/sk



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