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

% *Date of Decision: 16.08.2023*

+ **W.P.(C) 9919/2023 & CM APPL. 38188/2023**

VIRENDER KUMAR JAIN PROP. OF
M/S VIRENDRA WIRES

..... Petitioner

Through: Mr. Puneet Rai with Mr. Nikhil
Jain, Advs.

Versus

DELHI GST OFFICER, WARD 76
& ORS.

..... Respondents

Through: Mr. Rajeev Aggarwal, ASC and
Mr. Mahbher Mittal, Adv.

CORAM:

**HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN**

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning an order dated 28.04.2023 (hereafter '**the impugned order**') passed by the Delhi GST Appellate Authority (respondent no.2), whereby the petitioner's appeal against an order dated 02.11.2021 passed by the proper officer cancelling his GST Registration Number, was rejected.

2. The petitioner also impugns an order dated 02.11.2021, whereby his GST Registration was cancelled from retrospective date. In addition, the petitioner prays that directions be issued to respondent



no.1 to rectify the date of cancellation of his GST Registration.

3. The petitioner states that he is aged about 74 years and was engaged in the business of manufacturing and trading in copper wires. The petitioner carried on its business under the name of M/s Virendra Wires. The petitioner was registered in Delhi with the GST Department with effect from 01.07.2017 and was assigned the GST Registration Number: 07AAGPJ2772C1ZZ.

4. The petitioner states that on account of his ailing health, he could no longer carry on the business and accordingly, applied for cancellation of his GST Registration on 20.11.2020 with effect from the said date. The petitioner states that his health deteriorated further in the month of January 2021.

5. Respondent no.1 issued a notice dated 04.02.2021. The said notice stated that respondent no.1 had examined the petitioner's application and was not satisfied with it for the following reasons:

“Cancellation Details – Others (Please specify) – Please submit bank statement for all periods, Sale and Purchase Invoices, GRs, E-Way Bills etc.”

6. The petitioner's states that since he was unwell, he did not respond to the said notice within the stipulated period. Respondent no.1 issued an order dated 16.02.2021 rejecting the petitioner's application for cancellation of his registration. The said order reads as under:



“Order of Rejection of Application for Registration

This has reference to your reply filed vide ARN AA071120043257P dated 20/11/2020. The reply has been examined and the same has not been found to be satisfactory for the following reasons:

Therefore, your application is rejected in accordance with the provisions of the Act.”

7. It is once clear that the said order is *ex facie* erroneous. The petitioner had not filed any reply and therefore, the question of the same being considered as unsatisfactory did not arise. The said order also does not state any reasons for rejecting the petitioner’s application for cancelation of his GST Registration – the space for filling in the reasons is blank.

8. Although the notice dated 04.02.2021 issued earlier stated that respondent no.1 was not satisfied with the petitioner’s application; it did not provide any specific reasons for being so dissatisfied or for proposing rejection of the petitioner’s application. The said notice merely called upon the petitioner to provide certain details. It is not in dispute that the concerned officer had no particular information or ground on account of which the petitioner’s application for seeking cancellation of the registration was found to be unsatisfactory.

9. It is relevant to note that the petitioner has produced medical documents to show that he had health issues. He was diagnosed with “carcinoma left buccal mucosa” and had undergone surgery in the month of February 2021.



10. After the petitioner's application seeking cancellation of his GST Registration was rejected, respondent no.1 issued a show cause notice dated 16.02.2021 proposing to cancel the petitioner's registration for the reason that "the taxpayer found not functioning / non-existing at the principal place of business".

11. As noticed above, the petitioner was facing certain medical issues at the material time and therefore, neither responded to the said show cause notice nor appeared before the concerned officer.

12. The petitioner's GST Registration was cancelled by an order dated 02.11.2021 with retrospective effect from 01.07.2017. The said order sets out a tabular statement, which reflects that no tax was due from the petitioner at the material time.

13. Being aggrieved by the said order cancelling his GST Registration with retrospective effect, the petitioner preferred an appeal before the Appellate Authority on 16.02.2023 under Section 107 of the Central Goods and Services Tax Act, 2017 (hereafter '**the Act**'). The same was rejected by the impugned order on the ground that it was filed beyond the prescribed period.

14. As noticed above, it is the petitioner's case that it had stopped business on account of ill-health and had sought cancellation of his GST Registration with effect from 20.11.2020. Thus, there is no question of the petitioner being available at the principal place of business after he had ceased to carry on any business.



15. The petitioner is not aggrieved by cancellation of his GST Registration; he is aggrieved because the registration has been cancelled with retrospective effect from 01.07.2017. It is important to note that the show cause notice dated 16.02.2021 calling upon the petitioner to show cause why his GST Registration not be cancelled, did not indicate that the concerned officer had proposed to cancel the same with retrospective effect. The show cause notice also does not indicate that any inquiries were made, which revealed that the petitioner had never existed at his declared place of business.

16. The order dated 02.11.2021 cancelling the petitioner's registration also contains no reason whatsoever. It merely records that no reply was submitted to the show cause notice. It is an unreasoned order and completely disregards that the petitioner had filed an application dated 20.11.2020 for cancellation of his GST Registration and disclosed that he had stopped carrying on business. Thus, as stated above, the question of the petitioner being available at the principal place of business did not arise. It follows that this could not have been the ground for cancellation of the petitioner's GST Registration with retrospective effect.

17. In view of the above, we consider it apposite to allow the present petition and direct that the cancellation of the petitioner's GST Registration shall be effective from 20.11.2020. However, we clarify that this would not preclude the GST Authorities from initiating any proceedings for recovery of any dues, if it is found that the petitioner has failed to comply with any provisions of the Act. The respondents



are also not precluded from cancelling the petitioner's registration retrospectively from the date of registration, if there is any material to establish that the petitioner had not carried on any business after securing the GST Registration. Needless to state that any such action shall be preceded by a proper show cause notice and no order shall be passed without affording the petitioner an opportunity to be heard.

18. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 16, 2023
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