

## 2023 (4) TMI 156 - DELHI HIGH COURT

### ADITYA POLYMERS THROUGH ITS PROPRIETOR MR. SHWETA BHATIA VERSUS COMMISSIONER OF DELHI GOODS AND SERVICES TAX AND ANOTHER

W.P.(C) 14493/2022

Dated: - 28-3-2023

**Cancellation of GST registration of petitioner - non-filing of returns for a continuous period of six months - petitioner's appeal rejected on the ground that it was filed beyond the period as stipulated under Section 107(1) of the CGST Act - HELD THAT:-** In terms of **Section 29(2)** of the CGST Act, the **proper officer** is empowered to **cancel the registration from any such date** as he may deem fit including from any retrospective date. However, selecting a date from which to cancel the registration **cannot be arbitrary**. It is essential that the **exercise of powers to cancel the registration ab initio**, must be based on material on record and some rationale. Further, **the taxable person** must be put to **notice of the proposed action** to cancel the registration from a retrospective date so as to provide an opportunity to the said person to show cause why such cancellation should not be from a retrospective date.

In the present case, **the show cause notice issued to the petitioner did not mention that the proper officer proposed to cancel the registration with retrospective effect**. Thus, the petitioner had no opportunity to address any proposed action of cancellation of registration ab initio.

The present petition is disposed of with the direction that the cancellation of the petitioner's GST registration would take effect **from 11.12.2020** and not from 01.07.2017.

#### Judgment / Order

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

**For the Petitioner Through: Mr. Rakesh Kumar, Adv.**

**For the Respondents Through: Ms. Shilpa Singh, Adv. for Mr. Rajeev Aggarwal, ASC with Ms. Divyanshi Bansal, Adv.**

**VIBHU BAKHRU, J.**

1. The petitioner has filed the present petition, inter alia, praying as under:-

*"i) Your Lordship may be please to issue Writ of mandamus or any other appropriate Writ to set aside order of dated 11-12-2020 and Respondent 2 & 3 to direct them to restore the Registration Certificate of the Petitioner from date of registration i.e 01/07/2017 or*

*ii) Set aside order of the Respondent No.3 to the extent of cancellation of registration from retrospective date.*

*iii) Since the petitioner are constrained to approach your lordship by way of this petition only because of acts of Respondent authorities, Your Lordship may be pleased to direct the Respondent authority to pay cost of this litigation to petitioner.”*

2. The petitioner carries on the business as the sole proprietor of Aditya Polymers. She is, essentially, aggrieved by the action of the respondents in cancelling the GST registration. The petitioner was registered under the Central Goods and Service Tax Act, 2017 (hereafter ‘the CGST Act’) with effect from 01.07.2017 (GSTIN – 07AEYPB7882D1Z2).

3. The respondents issued a show cause notice dated 11.12.2020, calling upon the petitioner to show cause why her GST registration not be cancelled for the reason that she had not filed her returns for a continuous period of six months. The respondents also suspended the petitioner’s registration with effect from the said date, that is, 11.12.2020.

4. The petitioner did not respond to the said show cause notice. Consequently, by an order dated 15.07.2021, the petitioner’s GST registration was cancelled with effect from the date on which it was granted, that is 01.07.2017. The petitioner did not file any application seeking revocation of cancellation but proceeded to appeal the order dated 15.07.2021 cancelling the petitioner’s registration before the Appellate Authority.

5. The petitioner’s appeal was rejected by an order dated 19.09.2022 on the ground that it was filed beyond the period as stipulated under Section 107(1) of the CGST Act.

6. Aggrieved by the same, the petitioner has filed the present petition.

7. The learned counsel appearing for the petitioner states that the petitioner stopped carrying on business from her principal place of business in Delhi and therefore, had not filed any returns. The petitioner is not aggrieved by the cancellation of its GST registration and states that in any event her GST registration was required to be cancelled on account of her discontinuing its business and shifting to Kanpur. The petitioner is essentially aggrieved on account of the cancellation of its registration with retrospective effect.

8. In terms of Section 29(2) of the CGST Act, the proper officer is empowered to cancel the registration from any such date as he may deem fit including from any retrospective date. However, selecting a date from which to cancel the registration cannot be arbitrary. It is essential that the exercise of powers to cancel the registration ab initio, must be based on material on record and some rationale. Further, the taxable person must be put to notice of the proposed action to cancel the registration from a retrospective date so as to provide an opportunity to the said person to show cause why such cancellation should not be from a retrospective date.

9. In the present case, the show cause notice issued to the petitioner did not mention that the proper officer proposed to cancel the registration with retrospective effect. Thus, the petitioner had no opportunity to address any proposed action of cancellation of registration ab initio.

10. The learned counsel appearing for the petitioner submits that the petitioner would have no

objection if the order cancelling the petitioner's GST registration is sustained albeit with effect from 11.12.2020 (the date of the show cause notice) instead from 01.07.2017, that is from the date when such registration was granted. The learned counsel appearing for the respondents is also agreeable to the same.

11. In view of the above, the present petition is disposed of with the direction that the cancellation of the petitioner's GST registration would take effect from 11.12.2020 and not from 01.07.2017.

12. Needless to state that the respondents are not precluded from initiating any action for recovery of any tax, interest or penalty or from initiating any other action that may be warranted in the facts and circumstances of the case, in accordance with law.