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By Nidhi, Advocate



Judgment No.: 059
Dt.: 30-01-2024



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Judgment Deals With

Section/Rule	Section 29
Authority	Delhi High Court
Case Name	Hari Om Metals VS The Commissioner Of CGST And Anr
Dated	11 th January, 2024

Brief Facts:

Petitioner impugns show cause notice (SCN) dated 23.12.2022 and order dated 16.01.2023 whereby GST registration of the petitioner has been cancelled retrospectively with effect from 02.07.2017.

Contention of the Petitioner:

A SCN was issued on 30.03.2022 on the same premise alleging that petitioner had obtained registration by fraud, willful, mis-statement and suppression of facts and alleging that the petitioner did not exist on the registered address. The proceedings were dropped on 08.04.2022 and suspension of registration was revoked. Once again the SCN dated 23.12.2022 has been issued seeking cancellation of the GST registration on the same ground.

On account of a dispute between the partners, petitioner is no longer interested in carrying on the business and has decided to discontinue the same and seek cancellation of GST registration; however, cancellation of GST registration ought not to be from retrospective date.

Findings & Decision of the Court:

The impugned order dated 16.01.2023 is bereft of any reasoning. The effective date of cancellation of registration is 02.07.2017.

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. Taxpayer's registration cannot be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant without any cogent reason.

One of the consequences for cancelling a tax payer's registration with retrospective effect is that the taxpayer's customers are denied the ITC availed in respect of the supplies made by the tax payer during such period. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

Keeping in view the fact that petitioner does not wish to carry on its business, the order dated 16.01.2023 was modified to the extent that the registration stands cancelled with effect from 23.12.2022.

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