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By Nidhi, Advocate



Judgment No.: 082
Dt.: 05-03-2024



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Judgment Deals With

Section/Rule	Section 29
Authority	Delhi High Court
Case Name	M/s. Kirti Plastics VS GST Officer/AVATO, Ward 63, Delhi & Anr.
Dated	20 th February, 2024

Brief Facts:

The Petitioner's registration was cancelled retrospectively with effect from 28.05.2018 vide impugned order dated 14.03.2023.

Contention of the Petitioner:

The petition has been filed by Sh. Ashish Garg, legal heir of Late Sh. Pawan Kumar, who was the proprietor of M/s Kirti Plastics. A SCN dated 15.01.2023 was issued to the petitioner stating failure to furnish returns for a continuous period of 6 months. The impugned order dated 14.03.2023 passed on the Show Cause Notice dated 15.01.2023 does not give any reasons for cancellation. The order further states that effective date of cancellation of registration is 28.05.2018 i.e., a retrospective date. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. Sh. Pawan Kumar was doing his business till first half of the year 2021 and expired on 15.08.2021. SCN was issued on 15.01.2023 wherein the registration was suspended w.e.f 15.01.2023. Thereafter, Department passed the order dated 14.03.2023 retrospectively cancelling the GST registration of the taxpayer. No demand had been raised by the said order, however, the Registration was cancelled retrospectively w.e.f 28.05.2018. The notice could not be responded as the same was uploaded on the common portal and was not physically served to the Petitioner. There is no intention to carry on business and the business has been discontinued immediately on the demise of Sh. Pawan Kumar. Petitioner is aggrieved by the retrospective cancellation of the registration.

Findings & Decision of the Court:

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 returns were filed and taxpayer was compliant. A taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted. The SCN did not put the noticee to notice that registration was liable to be cancelled retrospectively. The Petitioner does not seek to carry on business or continue with the registration, thus, the impugned order dated 14.03.2023 was modified to the limited extent that registration shall now be treated as cancelled with effect from 15.08.2021 i.e., the date when Sh. Pawan Kumar passed away.

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