



\$~45

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 14560/2023 & CM APPL. 57754/2023
RAJNI MITTAL (LEGAL HEIR OF LATE SH.
VINOD KUMAR) Petitioner

Through: Mr. Nitin Gupta & Ms. Reena
Gandhi, Advs.

versus

AVATO WARD -71 STATE GOODS AND SERVICES TAX &
ANR. Respondents

Through: Ms. Shaguftha Hameed, Adv. for Mr.
Rajeev Aggarwal, ASC.

CORAM:

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

ORDER

07.11.2023

%

1. Issue notice.
2. The learned counsel for the respondents accepts notice.
3. The petitioner has filed the present petition, *inter alia*, stating that the petitioner is a legal heir of Sh. Vinod Kumar who is stated to have expired on 21.12.2019. The petitioner is essentially aggrieved by the order cancelling the deceased tax payer's registration with retrospective effect.
4. The learned counsel for the petitioner states that after the demise of her husband, Sh. Vinod Kumar (the deceased) on 21.12.2019, she had filed an application dated 30.04.2022 seeking the cancellation of the GST registration in the name of the deceased. In response to the said application, on 30.05.2022, the Proper Officer issued a notice proposing to dismiss the petitioner's application for cancellation of GST registration for the following reasons: -

“1 Basic Details - Address for Future Correspondence - Address



not correct

2 Cancellation Details - Value of Stock - Value of Trading Material stock appears to be incorrect”

5. The petitioner claims that that the said notice was not received and therefore, the petitioner did not reply to the same. It is also stated that the said notice was issued in the name of the deceased tax payer which is impermissible. Therefore, the Proper Officer passed an order dated 01.12.2022 rejecting the application of the petitioner for cancellation of its GST registration in the name of the deceased. The said order does not state any reasons. The space available in the said letter for recording the reason is left blank.

6. Thereafter, the Proper Officer issued a show cause notice dated 13.01.2023 (hereafter “**the impugned SCN**”) proposing to cancel the deceased tax payer’s GST registration on the ground of failure to furnish the returns for a period of six months. The GST registration was suspended with effect from the date of the impugned SCN.

7. It is material to note that the impugned SCN was also issued in the name of the deceased tax payer and called upon the deceased tax payer to reply to the impugned SCN and appear before the concerned officer on 10.02.2023. The petitioner claims that the impugned SCN was also not received and therefore, the petitioner did not respond to the same. It is contended that the impugned SCN is illegal as it was issued in the name of deceased tax payer even after the Proper Officer was informed of the said demise. The registration of the deceased was cancelled by a cancellation



order dated 16.02.2023 with retrospective effect from 01.07.2017.

8. It is material to note that the impugned SCN did not propose to cancel the GST registration with retrospective effect. Although the Proper Officer is empowered to cancel the GST registration with retrospective date, the said power cannot be exercised arbitrarily and without any reason for cancelling the GST registration with retrospective effect. In the present case, the allegation against the deceased tax payer is of non-filing of returns. Obviously, a failure to furnish returns for a period of six months, absent any other reason, does not warrant cancellation of the GST registration with retrospective effect.

9. Since the Proper Officer was informed of the demise of the tax payer and the stoppage of business, the question of filing the returns after the demise did not strictly arise.

10. In view of the above, we consider it apposite to direct that the registration of the deceased tax payer be cancelled from the date of the application for cancellation of registration filed by the petitioner, that is from 30.04.2022.

11. The petitioner shall ensure that the provisions of the Central Goods and Services Tax Act, 2017 (hereafter “**the CGST Act**”) for a period prior to the said date are duly complied with. The petitioner shall also provide the details as sought for by the Proper Officer in terms of its notice dated 30.05.2022 within a period of two weeks.

12. It is clarified that the cancellation of the GST registration would not



preclude the Department from taking such steps in case of violation of any provisions of the CGST Act. It is also clarified that if the Proper Officer is of the view that there are any specific reasons for cancelling the GST registration of the deceased with retrospective effect, it would not be precluded from issuing an appropriate show cause notice to the legal heir of the deceased tax payer and to take steps thereafter.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 7, 2023

Ch

[Click here to check corrigendum, if any](#)