

Cancellation GST Registration Ab initio from Date it was Granted due to Non-Filing of Return for 6 months is not valid: Delhi HC

The Delhi High Court has held that Goods and Service Tax (GST) Registration Cancelled Ab initio from the date it was granted due to non-filing of Return for 6 months is not valid.

Balajee Plastomers Private Limited, the petitioner challenged the order (the impugned order'), whereby the petitioner's GST registration was cancelled with retrospective effect from 01.07.2017. The petitioner claimed that it was registered under the Central Goods and Services Tax Act, 2017 ('the CGST Act') with effect from 01.07.2017. The petitioner continued to carry on its business and complied with all the provisions of the CGST Act since its registration, however, the petitioner's business suffered adversely in the year 2019.

The petitioner decided to surrender its GST registration and applied for the cancellation of GST registration on 28.11.2019. The petitioner claimed that it had sought cancellation with effect from the said date after discharging all its GST liabilities for the prior period and stated that it had filed all the returns for the period before November 2019.

The respondent issued a notice seeking additional information regarding the petitioner's application to cancel its GST registration. Since the petitioner did not respond to the said notice, the petitioner's application to cancel its GST registration was rejected.

The petitioner, once again, applied for cancellation of its GST registration with effect from 28.11.2019 on 08.07.2020. The petitioner claims that respondent No. 2 issued a notice in respect of the said application on 16.09.2020. According to the petitioner, the said notice was beyond the stipulated period and therefore, the petitioner was under the impression that its GST registration was cancelled, however, the petitioner's application for cancellation of its GST registration was rejected by an order dated 05.11.2020.

Thereafter, the concerned officer issued a Show Cause Notice dated 13.01.2021 proposing to cancel the petitioner's GST registration for the reason that the petitioner had not filed the returns for a continuous period of six months. The GST registration was also suspended with effect from 13.01.2021. The petitioner's GST registration was cancelled by the impugned order with retrospective effect from 01.07.2017.

It was evident that the impugned order did not set out any reason for cancelling the petitioner's registration except that no reply was received from the SCN. It is the petitioner's case that it had stopped its business in the year 2019 and applied for the cancellation of GST registration with effect from 28.11.2019.

In the absence of a reason for the cancellation of GST registration with a retrospective date, that is, 01.07.2017, the court comprising Justice Vibhu Bakhru and Justice Amit Mahajan held that respondent no.2's decision to cancel the GST registration with a retrospective date cannot be sustained.

It was observed that the GST Registration was cancelled on the ground that had not furnished any return for six months which cannot be grounds for cancelling the GST registration ab initio from the date it was granted. The Court directed that the cancellation of the petitioner's GST shall take effect from 28.11.2019 and not from 01.07.2017.

(Source: Taxscan.in)