

Jsd Traders Llp vs Additional Commissioner, Cgst & Anr on 3 March, 2025

Author: Yashwant Varma

Bench: Yashwant Varma

\$~70

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 2608/2025
JSD TRADERS LLP

Through:

versus

ADDITIONAL COMMISSIONER, CGST & ANR.

.....Respondent

Through: Ms. Sushila Narang, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

ORDER

%

03.03.2025

CM APPL. 12411/2025 (Ex.)

Allowed, subject to all just exceptions.
The application stands disposed of.

W.P.(C) 2608/2025

1. The writ petitioner has approached this Court seeking the following reliefs:

"i. Issue of a writ in the nature of Certiorari for quashing the Order of Cancellation of GST Registration under 29 of the Central Goods and Service Tax Act, 2017 dated 20.03.2024 (Annexure P-3); AND/OR ii. Issue a writ in nature of Certiorari for quashing of Order dated 10.01.2025 (Annexure P-6) whereby the Appeal filed by the Petitioner assailing the Order of Cancellation of GST Registration was dismissed by the Respondent No. 1 on the ground of limitation; AND/OR iii. Issue a writ in the nature of Mandamus directing Respondents to restore the GST Registration 07AANFJ4541J1Z3 assigned to the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2025 at 01:47:56 Petitioner; AND/OR iv. Issue of any other

appropriate writ or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case;

v. Any other order or relief as this Hon'ble Court deems fit and proper in the interest of justice."

2. The challenge is principally laid to the order of 20 March 2024 pursuant to which the Goods and Services Tax¹ registration of the writ petitioner has come to be cancelled with retrospective effect from 09 November 2017. The said order is extracted hereinbelow:

"Order for Cancellation of Registration This has reference to show cause notice issued dated 01/08/2023.

The effective date of cancellation of your registration is 09/11/2017.

3. It may be noted that a registered person furnishing return under sub-section (1) of section 39 of the CGST Act, 2017 is required to furnish a final return in FORM GSTR-10 within three months of the date of this order.

4. You are required to furnish all your pending returns.

5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

Place: RANGE - 164 Date: 20/03/2024 Gaurav Kumar Superintendent Ward 84"

3. The aforesaid order was preceded by the issuance of a Show Cause Notice² dated 01 August 2023 which reads as follows:

GST SCN This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2025 at 01:47:56 "Show Cause Notice for Cancellation of Registration Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

1 Section 29(2)(e)-registration obtained by means of fraud, wilful misstatement or suppression of facts You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

You are hereby directed to appear before the undersigned on 08/08/2023 at 03:00 PM If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 01/08/2023 Kindly refer the supportive document attached for case specific details.

Place: Delhi Date: 01/08/2023"

4. Although the record would bear out that the aforesaid SCN was duly served, the petitioner does not appear to have filed a response and which led to the passing of the final order dated 20 March 2024.

5. As is manifest from the aforesaid, neither the SCN nor the final order alludes to or rests upon any material on the basis of which the respondent would have formed the opinion that Section 29(2)(e) of the Central GST Act, 20173 was violated nor did it embody an intent of a proposed retrospective cancellation of the GST registration of the petitioner.

6. We had insofar as the latter issue is concerned and bearing in CGST Act This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2025 at 01:47:56 mind the power that Section 29 of the CGST Act confers upon the respondents to cancel registration from a retrospective date, in Riddhi Siddhi Enterprises vs. Commissioner of Goods and Services Tax (CGST), South Delhi & Anr.4 held as follows:

"5. As is manifest from a reading of Section 29, clauses (a) to (e) of Section 29(2) constitute independent limbs on the basis of which a registration may warrant cancellation. While the provision does enable the respondents to cancel that registration with retrospective effect, the mere existence or conferral of that power would not justify a revocation of registration. The order under Section 29(2) must itself reflect the reasons which may have weighed upon the respondents to cancel registration with retrospective effect. Given the deleterious consequences which would ensue and accompany a retroactive cancellation makes it all the more vital that the order be reasoned and demonstrative of due application of mind. It is also necessary to observe that the mere existence of such a power would not in itself be sufficient to sustain its invocation. What we seek to emphasise is that the power to cancel retrospectively can neither be robotic nor routinely applied unless circumstances so warrant. When tested on the aforesaid precepts it becomes ex facie evident that the impugned order of cancellation cannot be sustained.

6. We note that while dealing with the right of the respondents to cancel GST registration with retrospective effect and the manner in which such power should be

exercised in accordance with the statutory scheme was an issue which was noticed in Ramesh Chander vs Assistant Commissioner of Goods and Services Tax, Dwarka Division, CGST Delhi & Anr.⁴ The Court in Ramesh Chander taking note of the contours of Section 29 had held:-

"1. The petitioner impugns order in appeal dated 29.12.2023, whereby the appeal filed by the petitioner has been dismissed solely on the ground of limitation. Petitioner had filed the appeal impugning order dated 13.07.2022 whereby the GST registration of the petitioner was cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 07.04.2022.

2. Vide impugned Show Cause Notice dated 07.04.2022, petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-

"Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months"

W.P.C 8061/2024 dated 25 September 2024 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2025 at 01:47:57

3. Petitioner was in the business of services involving repair, alterations, additions, replacements, renovation, maintenance or remodelling of the building covered above, General construction services of harbours, waterways, dams, water mains and lines, irrigation and other waterworks, General construction services of long-distance underground/ overland/ submarine pipelines, communication and electric power lines (cables); pumping stations and related works; transformer stations and related works, General construction services of local water & sewage pipelines, electricity and communication cables & related works, Installation, assembly and erection services of other prefabricated structures and constructions and possessed a GST registration.

4. A show cause notice was issued to the petitioner on 07.04.2022 Though the notice does not specify any cogent reason, there is an observation in the notice stating failure to furnish returns for a continuous period of six months. The show cause notice requires the petitioner to appear before the undersigned i.e. authority issuing the notice. Notice does not give the name of the officer or place or time where the petitioner has to appear.

5. Further the order dated 13.07.2022 passed on the show cause notice does not give any reasons for cancellation of the registration. It, however, states that the registration is liable to be cancelled for the following reason "whereas no reply to notice to show cause has been submitted". However, the said order in itself is contradictory, the order states "reference to your reply dated 16.04.2022 in response to the notice to show cause dated 07.04.2022" and the reason stated for cancellation is "whereas no reply to notice to show cause has been submitted". The order further states that effective date of cancellation of registration is 01.07.2017 i.e. retrospective date.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 13.07.2022 does not qualify as an order of cancellation of registration.

7. As per the petitioner, the said order reflected that the GST of the Petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the Petitioner.

8. We notice that the show cause notice as well as the impugned order of cancellation, are themselves vitiated on account of lack of reason and clarity. The appeal has been dismissed solely on the ground of limitation. Since the very foundation of entire proceedings i.e. show cause notice and the order of cancellation are vitiated, we are of the view that no This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2025 at 01:47:57 purpose would be served in relegating the petitioner to the stage of an appeal.

9. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, 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. The 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 the returns were filed and the taxpayer was compliant.

10. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention in this regard is correct, it would follow that the proper officer is also required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

11. The show cause notice does not even state that the registration is liable to be cancelled from a retrospective date.

12. The petition is allowed. The impugned show cause notice dated 07.04.2022, order of cancellation dated 13.07.2022 and the order in appeal dated 29.12.2023 are accordingly set aside. GST registration of the petitioner is restored, subject to petitioner filing requisite returns upto date.

13. It is clarified that since the petitioner could not have filed the return after the GST registration was suspended, there shall be no liability to pay any penalty or fine for delayed filing. However, this would only apply in case petitioner files an affidavit of undertaking that petitioner has not carried

out any business or raised invoices or taken any Input Tax Credit after the registration was suspended with effect from 07.04.2022 i.e., the date of suspension of the registration.

14. Respondent would be at liberty to initiate appropriate proceedings in accordance with law after giving a proper show cause notice containing complete details, if so advised. Further This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2025 at 01:47:57 this order would not preclude the respondent from initiating any steps in accordance with law, if it is found that the petitioner had violated any provisions of the Act.

15. Petition is disposed of in the above terms."

7. We further take note of the judgment in Delhi Polymers vs Commissioner, Trade and Taxes & Anr.5 wherein the following was observed:-

"1. Petitioner has filed the appeal impugning order of cancellation of registration dated 15.12.2021 whereby the GST registration of the Petitioner has been cancelled retrospectively with effect from 01.07.2017. Petitioner also impugns Show Cause Notice dated 04.09.2021.

2. Vide Show Cause Notice dated 04.09.2021, petitioner was called upon to show cause as to why the registration be not cancelled for the following reason:-

"Collects any amount representing the tax but fails to pay the same to the account of the Central/State Government beyond a period of three months from the date on which such payment becomes due"

3. Petitioner was engaged in the business of Sanitary ware Products & Accessories i.e., Baths, Shower, Washbasins, Seats and Cover etc. and possessed GST registration.

4. Show Cause Notice dated 04.09.2021 was issued to the Petitioner seeking to cancel its registration. However, the Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.

5. Further, the impugned order dated 15.12.2021 passed on the Show Cause Notice dated 04.09.2021 does not give any reasons for cancellation. It, however, states that the registration is liable to be cancelled for the following reason "whereas no reply to the show cause notice has been submitted". However, the said order in itself is contradictory. The order states "reference to your reply dated 15.12.2021 in response to the notice to show cause dated 04.09.2021" and the reason stated for the cancellation is "whereas no reply to notice show cause has been submitted". The order further states that effective date of cancellation of registration is 01.07.2017 i.e., a retrospective date.

6. Neither the show cause notice, nor the order spell out the reasons for retrospective cancellation. In fact, in our view, order dated 15.12.2021 does not qualify as an order of cancellation of registration. On one hand, it states that the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2025 at 01:47:57 registration is liable to be cancelled and on the other, in the column at the bottom there are no dues stated to be due against the petitioner and the table shows nil demand.

7. Learned Counsel for the Petitioner submits that the said order reflected that the GST registration of petitioner stands cancelled from 01.07.2017 even though returns thereafter have been filed by the Petitioner.

8. He further submits that the petitioner is no longer interested in continuing the business and the business has been discontinued.

9. 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 the returns were filed and the taxpayer was compliant.

10. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention is required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

11. It may be further noted that both the Petitioners and the department want cancellation of the GST registration of the Petitioner, though for a different reason.

12. In view of the fact that Petitioner does not seek to carry on business or continue the registration, the impugned order dated 15.12.2021 is modified to the limited extent that registration shall now be treated as cancelled with effect from 04.09.2021 i.e., the date when the Show Cause Notice was issued.

13. It is clarified that Respondents are also not precluded from taking any steps for recovery of any tax, penalty or interest that may be due in respect of the subject firm in accordance with law.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2025 at 01:47:57

14. Petition is accordingly disposed of in the above terms."

8. In view of the aforesaid and in light of an abject failure on the part of the authority to assign even rudimentary reasons for a retroactive cancellation, we find ourselves unable to sustain the order impugned."

7. In view of the above and when the impugned order is tested on the aforementioned precepts, it becomes apparent that in the absence of reasons having been assigned in the original SCN in support of a proposed retrospective cancellation as well as a failure to place the petitioner on prior notice of such an intent clearly invalidates the impugned action. We are thus of the considered opinion that the writ petition is entitled to succeed on this short ground alone. This, however, would be without prejudice to the right of the respondent to continue the SCN proceedings on the allegation of the initial registration having been obtained by practise of fraud or misrepresentation subject to the condition that the petitioner shall be duly apprised of the material on the basis of which that opinion has been formed.

8. Insofar as the rejection of the appeal is concerned in light of the statutory period of limitation, it is conceded before us that the said issue already stands answered against the writ petitioner in light of our decision in M/s Addichem Speciality LLP v. Special Commissioner, Department of Trade and Taxes⁵.

9. Accordingly, we allow the instant writ petition and quash the order of 20 March 2024 insofar as it proceeds to cancel the registration of the petitioner from a retrospective date. The respondent shall now proceed to adjudicate the SCN afresh after affording an opportunity of hearing to the writ petitioner. The aforesaid 2025 SCC OnLine Del 646 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2025 at 01:47:57 proceedings shall be drawn and concluded notwithstanding the dismissal of the statutory appeal of the writ petitioner on account of limitation and the bar that comes into play by virtue of Section 107(4) of the CGST Act.

10. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J HARISH VAIDYANATHAN SHANKAR, J MARCH 03, 2025/RW This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2025 at 01:47:57