

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2288 of 2023

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M/S DEVI PRODUCTS

Versus

STATE OF GUJARAT

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Appearance:

MR KUNTAL A PARIKH(7757) for the Petitioner(s) No. 1
for the Respondent(s) No. 2

MS SHRUNJAL SHAH, MR UTKARSH SHARMA AND MR
KATHIRIA, AGPS for the Respondent(s) No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE (DESIGNATE) MS. JUSTICE
SONIA GOKANI**

and

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 15/02/2023

ORAL ORDER

**(PER : HONOURABLE THE CHIEF JUSTICE (DESIGNATE) MS. JUSTICE
SONIA GOKANI)**

1. By way of the present petition under Article 226 of the Constitution, the petitioner seeks to challenge the legality and validity of the order dated 24.03.2021 passed by the respondent No.2 whereby the registration certificate granted to the petitioner under the Central Goods and Service Tax Act, 2017 and Gujarat Goods and Services Tax, 2017 ("GST Acts" for short) has been cancelled with effect from 01.07.2017. It is averred that the same has been done in violation of principles of natural justice.

2. Petitioner has challenged the show cause notice dated 15.03.2021 issued under Rule 21 of the CGST Rules and GST Rules whereby respondent No.2 suspended the registration certificate with immediate effect from 15.03.2021 itself.

3. Petitioner is sole proprietor engaged in the business of trading of article brass and was registered with the Gujarat Value Added Tax under the Gujarat Value Added Tax, 2003 and Central Sales Tax Act, 1956. He got his registration with effect from 01.07.2017 by virtue of Section 139 of the GST Act and he has granted final certificate of registration under the very provision. According to petitioner, till June, 2020, he had filed his return of income under the GST Act, however, because of the prevalent circumstances he had no business subsequent to June, 2020, and therefore he was of *bonafide* belief that there was no requirement to file return under the GST ACT.

4. A show cause notice was issued on 15.03.2021 under Rule 22(1) of the GST Rules read with Section 29 of the GST Act whereby the petitioner was informed that his registration was liable to be cancelled because he had not filed the return for a continuous period of six months and he was called upon to file his reply to the notice. It is also the grievance of the petitioner that his registration has been suspended with immediate effect on 15.03.2021 itself under Rule 21A of the GST Rules and this had been done without recording any reasons. Thereafter, the registration of his was cancelled by respondent No.2 with effect from 01.07.2017 without recording any particulars or the reasons or the grounds for cancellation. This orders since was cryptic and there is no tax demand determined, he is before this Court.

5. It is his say that due to Covid-19 pandemic his business was badly affect and in fact, there had been no business post June, 2020 period. The financial hardship that he suffered from July, 2020 had led him to believe

that there was no requirement for GST return to file. His registration has been cancelled with effect 01.07.2017 for not filing return after June, 2020. Therefore, he has approached this Court with the following prayers :

- (a) That this Honorable Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the impugned order dated 24.03.2021 (Annexure - A) cancelling the registration certificate of the Petitioner passed by the Respondent No. 2 as well as show cause notice dated 15.03.2021 (Annexure - B); and
- (b) That this Honorable Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order directing the Respondents to forthwith restore the registration certificate (Annexure - C) of the Petitioner with effect from 01.07.2017; and
- (c) Pending notice, admission and final disposal of this Petition, this Hon'ble Court by way of interim relief be pleased direct the respondent authorities to restore the registration of the Petitioner with effect from 01.07.2017; and
- (d) Ex-parte ad-interim relief in term of Prayer 9(c) be granted; and
- (e) For Costs; and
- (f) That this Honorable Court be pleased to grant such other and further relief/s as are deemed just and proper in the facts and circumstances of this case."

6. We have heard Mr.Kuntal Parikh, learned advocate appearing for the petitioner who has drawn our

attention to the decision of this Court in case of **Aggarwal Dyeing and Printing Works vs. State of Gujarat and others** rendered in **Special Civil Application No. 18860 of 2021** and allied matter. He has urged that his case is squarely covered by the decision of this Court. In the case of **Aggarwal Dyeing**, the writ applicant had approached the Court by urging that the show cause notice issued to him was cryptic and the order passed was also not in accordance with law. The appeal was preferred after delay of more than 2 years before the appellate authority in that case under Section 107 read with Rule 108 of the Rules. The case there was also that the turn over was nil and under the *bonafide* belief that no return was required to be tendered, the same was not submitted. In that group of matters, this Court had noticed that the notice impugned was devoid of any specific details and particulars. The order of cancellations also were more glaring. He therefore has urged that this would squarely cover the issue and hence, the order needs to be quashed along with the notice.

7. Ms.Shrunjal Shah, learned Assistant Government Pleader appearing on an advance copy argued fervently and Mr.Utkarsh Sharma, learned Assistant Government Pleader has also has drawn the attention of this Court to the scheme of the Act which has brought into force on 01.07.2017 particularly the provision of Section 29 to urge this Court that the filing of return is must and Section 29 confers power on proper Officer to cancel the registration. It is also further argued before this Court that for period of six months, no return is filed, no further dilation in the notice is required. According to learned Assistant Government Pleader, the decision covers the issue of the cryptic notice and in the instant case such cancellation is on account of non-filing of return and that factor needs to be considered by the Court. It is not in dispute that this decision has not been challenged and in fact has been followed in various decisions delivered thereafter. In short, the attempt has been made to defend the action of the concerned officer since this was in relation to non-filing of the return for a period of six

months.

8. Having heard both the sides at the stage of admission, we deem it appropriate to entertain this petition essentially following the decision in the case of **Aggarwal Dyeing**. The controversy there in the writ application was whether the show cause notice seeking cancellation of registration and the consequential order cancelling the registration under the GST Act was valid and sustainable in the eyes of law. The Court not only had examined the scheme of the Act but had also following various decisions of the Apex Court particularly on the necessity of giving reasons by a body or authority in support of the decision held that the absence of reasons renders an order indefensible and unsustainable particularly when it is subject to the appeal or revision. It also has amplified the decision of the **Krani Associates vs. Masood Ahmed** reported in **(2010) 9 SCC 496** where the Court has held that insistence on recording of reasons is meant to serve the vital principles of justice

that justice must not only be done but it must also appear to be done as well. It would also operate as valid restraint on any possible arbitrary exercise of judicial and quasi judicial or even administrative power. It also reassures that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations. The reasons have virtually become indispensable component of a decision making process. Observing the principles of natural justice vide judicial, quasi judicial or even the administrative bodies. They would also facilitate the process of judicial review by the superior Court. Therefore, it has been held that the assignment of the reason is imperative in nature and speaking order doctrine mandates assigning the reasons which is heart and sole of the decisions and that must be the result of independent re-appreciation of evidence adduced and documents produced in the case. Applying these principles, the Court held that the State and its officers ought to have at least incorporate the specific details of the contents of the show cause notice which any

prudent person can respond to as otherwise it would to fail to respond to such show cause notice which is bereft of details thereby making the mechanism of issuing show cause notice only a formality. Some of the findings and observations would be of profitable to reproduced at this stage :

12. At this stage it would be germane to refer to observations made by the Andhra Pradesh High Court in the case of MRF Mazdoor Sangh vs. The Commissioner of Labour & Others, reported in 2014 (3) ALT 265, MANU/AP/1685/2013, wherein the matter of cancellation of registration of trade union, it was held that :

“The show cause notice should reflect the jurisdictional facts based on which the final order is proposed to be passed. The person proceeded against would then have an opportunity to show cause that the authority had erroneously assumed existence of a jurisdictional fact and, since the essential jurisdictional facts do not exist, the authority does not have jurisdiction to decide the other issues.”

12.1 We find that the aforesaid observation would squarely apply to the present facts of the case on hand. Thus, the sum and substance of various judgments on the principles of natural justice is to the effect that wherever an order is likely to result in civil consequences, though the statute or provision of law, by itself, does not provide for an opportunity of hearing, the requirement of opportunity of hearing has to be read into the provision.

13. It cannot be disputed that the writ applicant is liable to both civil and penal consequences pursuant to the impugned order of cancellation of certificate of registration. In all the writ applications we could note from the tabular details that the show cause notice

though issued in the prescribed form does not elaborate the reasons and the one line reason mentioned is nothing but the reproduction of either of the reasons provide under rules regarding cancellation of registration. It appears from the materials on record that the respondent no.2 issued a show-cause notice dated 18th September, 2018 in the Form GST REG-17, calling upon the writ-applicant to show-cause as to why the registration under the GST should not be cancelled. Such notice issued by the respondent no.2 is under Rule 22(1) of the Central Goods and Services Tax Rules, 2017. The notice dated 18th September, 2018 referred to above reads as under :

*"Form GST REG-17
[See Rule 22(1)]*

Reference Number : ZA240918027128D

Date : 18/09/2018

*To Registration no. (GSTIN/Unique ID) :
24AEXPA3306*

*SANJEEV PREM AGGARWAL
SURVEY NO.230, OPP. MARIYA BANK, B/H
RANIPUR VILLAGE, NAROL,
Ahmedabad, Gujarat 382405.*

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. Any Tax payer other than composite taxpayer has not filed returns for a continuous period of six months. 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 27/09/2018 at 12:42.

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.

*Place : Gujarat Signature valid digitally signed by
OS Goods and Service Tax Network
1.*

Date: 2018.09.18 13.00.44"

13.1 To say the least, the respondent authority i.e. the Assistant/Deputy Commissioner, State tax Officer ought to have atleast incorporated specific details to the contents of the show cause. Any prudent person would fail to respond to such show cause notice bereft of details thereby making the mechanism of issuing show cause notice a mere formality and an eye wash.

14. We further notice that the respondent authority has failed to extend sufficient opportunity of hearing before passing impugned order, inspite of specific request for adjournment sought for. Even the impugned order is not only non speaking, but cryptic in nature and the reason of cancellation not decipherable therefrom. Thus, on all counts the respondent authority has failed to adhered to the aforesaid legal position. We therefore, have no hesitation in holding that the basic Principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences.

15. We would be failing in our duty if we do not draw the attention of the Appellate Authority who has mechanically disposed off the appeals on the ground of delay. Apt would be to revisit the observations of the Supreme Court with regard to reasonable opportunity in the case of Union of India vs. Jesus Sales Corporation, reported in 1996 (4)SCC 69, wherein it is observed that a practice has developed holding that even in the absence of a provision providing for an opportunity of hearing, such a provision is required to be read into the Rules governing the case, particularly, when an order being made is likely to have civil consequences. The Hon'ble Supreme Court has emphasize up on the appellate court to have the approach tilting in favour of providing fair and reasonable opportunity of hearing while dealing with condonation of delay application in filing appeal. The relevant observation made by the Hon'ble Supreme Court in the case of Jesus Sales Corporation (supra) in para 2, are as under :

“The Appellate authority may dispense with such deposit in its discretion. The proviso relating to the condonation for delay in filing the appeal is more or less on the pattern of Section 5 of the Limitation Act. Some how, a practice has grown throughout the country that before rejecting the prayer for condonation of delay in filing the appeal or application, opportunities are given to the appellants or petitioners, as the case may be, to be heard on the question whether such delay be condoned. Opportunities to be heard are also the contesting respondents in such appeals. In different statutes given to where power has been vested in the Appellate authority to condone the delay in filing such appeals or applications, there are no specific provisions in those statutes saying that before such delays are condoned the appellants or the applicants shall be heard, but on basis of practice which has grown during the years the courts and quasijudicial authorities have been hearing the appellants and applicants before dismissing such appeals or applications as barred by limitations. It can be said that courts have read the requirements of hearing the appellants or the applicants before dismissing their appeals or applications filed beyond time on principle of natural justice, although the concerned statute does not prescribe such requirement specifically.”

15.1 The Appellate authority ought to have appreciated that the writ applicants at relevant point of time i.e. in year 2017, applied for registration which request was favourably considered by the authorities under the Act with a specific registration number allotted to the writ applicant. It was a transitional phase, whereby the old CST Act was repealed and the new regime of CGST/ GGST has come into force. With the different forms and procedure envisaged there under, any layman is bound to take time to adhered to the norms. The Record reveals that subsequently the writ applicants have claim to have filed their returns and have even deposited all dues. We further notice that such exercise has been undertaken through the writ applicant's Tax Consultant who were professionally engaged to undertake such task. Unfortunately, information of the returns for certain period not

being uploaded, surfaced in the year 2019 and the cause explained suggest that circumstances were beyond the writ applicant's reach. In such peculiar circumstances, it was least expected of the Appellate authority to condone the delay for filing appeal, more so, with the Onset of Pandemic Covid-19, preventing further follow up action. In the peculiar facts and circumstances, the authority ought to have condoned the delay which unfortunately was not done, despite the writ applicant having made a fervent request for condonation of delay in filing appeal seeking revocation of cancellation of registration.

16. When we inquired with the learned AGP appearing for the respondents as to why such vague show cause notices and vague final orders, bereft of any material particulars therein are being passed, the reply on behalf of the respondents was quite baffling. The learned AGP submitted that on account of technical glitches in the portal, the department is finding it very difficult to upload the show cause notice as well as the final order of cancellation of registration containing all the necessary details and information therein. According to the learned AGP, it is in such circumstances that the show cause notices and impugned orders without any details are being forwarded to the dealers. This hardly can be a valid explanation for the purpose of issuing such vague show cause notices and vague final orders cancelling the registration.

17. We direct that till the technical glitches are not cured, the department will henceforth issue show cause notice in a physical form containing all the material particulars and information therein to enable the dealer to effectively respond to the same. Such show cause notice in physical form shall be dispatched to the dealer by the RPAD. In the same manner, the final order shall also be passed in physical form containing all necessary reasons and the same shall be forwarded/communicated to the dealer by way of RPAD. Any lapse in this regard, henceforth shall be viewed very strictly. We are saying so because this Court has been fedded up with unnecessary litigation in this regard.

18. Our final conclusion are as under:

18.1. Until the Department is able to develop and upload an appropriate software in the portal which would enable the Department to feed all the necessary information and material particulars in the show cause notice as well as in the final order of cancellation of registration that may be passed, the authority concerned shall issue an appropriate show cause notice containing all the necessary details and information in a physical form and forward the same to the dealer by RPAD. In the same manner, when it comes to passing the final order, the same shall also be passed in a physical form containing all the necessary information and particulars and shall be forwarded to the dealer by RPAD.

18.2 Over a period of time, we have noticed in many matters that the impugned order cancelling the registration of a dealer travels beyond the scope of the show cause notice. Many times, the dealer is taken by surprise when he gets to read in the order that the authority has relied upon some inspection report or spot visit report etc. If the authority wants to rely upon any particular piece of evidence then it owes a duty to first bring it to the notice of the dealer so that if the dealer has anything to say in that regard, he may do so. Even if the authority wants to rely on any documentary evidence, the dealer should be first put to the notice of such documentary evidence and only thereafter, it may be looked into.

18.3 The aforesaid may appear to be very trivial issues but, it assumes importance in reducing the unnecessary litigation. Our concern is that on account of procedural lapses, the High Court should not be flooded with writ applications. The procedural aspects should be looked into by the authority concerned very scrupulously and diligently. Why unnecessarily give any dealer a chance to make a complaint before this Court when it could have been easily avoided by the department."

9. In the instant case, what one finds is that it was a case of non-filing of return for six months. Assuming that

requirement of filing of the return and the consequences for non-filing of return for six months is apparent in statutory provision, the very nature of notice has been held by this Court in the decision of **Aggrawal Dyeing** as cryptic and unsustainable under law.

10. Moreover, what is far more vital to be considered is the order which has been passed and that raises a serious concern of ours as the consequential order also is cryptic. While cancelling the registration, the authority concerned has not even determined the amount payable pursuant to such cancellation. It would be apt to reproduce the entire order of cancellation of registration :

"This has reference to your reply: dated 24/03/2021 in response to the notice to show cause dated 15/03/2021: Whereas no reply to notice to show cause has been submitted;

*To
The effective date of cancellation of your registration is 01/07/2017 Determination of amount payable pursuant to cancellation:*

Accordingly, the amount payable by you and the computation and basis thereof is as follows:

The amounts determined as being payable above

are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before 03/04/2021 failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

<i>Head</i>	<i>Central Tax</i>	<i>State Tax / UT Tax</i>	<i>Integrated Tax</i>	<i>Cess</i>
<i>Tax</i>	0	0	0	0
<i>Interest</i>	0	0	0	0
<i>Penalty</i>	0	0	0	0
<i>Others</i>	0	0	0	0
<i>Total</i>	0	0	0	0

11. Assuming that the notice which merely speaks of “any tax payer other than composition tax payer has not filed returns for a continuous period of six months” would be comprehensible for the assessee to respond to the same as he was also given an opportunity to appear on 23.03.2021, this non-appearance on the part of the respondent when has resulted into cancellation of registration that too from the first date i.e. 01.07.2017 much prior to 2020 when he had defaulted in filing the returns, what is completely incomprehensible is that cancellation of registration without any determination of

the amount which is to be paid by the petitioner which is hardly sustainable and such action can hardly be ratified in any manner.

12. We notice that this Court having noticed the repeated actions on the part of the officers of issuance of notice had also seriously frowned upon the non following of the decision. However, it has been brought to our notice that this is prior to delivery of the judgment in the month of February, 2022, therefore nothing further is to be stated as learned Assistant Government Pleader Mr.Kathiria had also drawn the attention of this Court of senior officers having taken note of the said decision and having circulated the same amongst them.

13. The writ application is allowed quashing the show cause notice and the consequential order cancelling registration with liberty to the respondent to issue fresh notice with particular reasons incorporating the details and a reasonable opportunity of hearing to writ applicant and to pass appropriate speaking order. The writ

applicant is also permitted to respond to the same by filing an objection and reply with necessary documents.

(SONIA GOKANI, CJ (DESIG.))

GAURAV J THAKER

(SANDEEP N. BHATT, J)

