

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 22ND DAY OF DECEMBER 2022 / 1ST POUSHA, 1944

WP (C) NO. 29807 OF 2022

PETITIONER:

DOMINIC DAVID,
AGED 65 YEARS
265, MALAYIL TINTU VILLA,
PANDANAD NORTH,
KALLISSERY, CHENGANNUR,
ALAPPUZHA, PIN - 689 121.

BY ADVS.
HARISANKAR V. MENON
MEERA V.MENON
R.SREEJITH
K.KRISHNA

RESPONDENTS:

- 1 THE STATE TAX OFFICER,
COMMERCIAL TAX OFFICE, WORKS CONTRACT,
ALAPPUZHA - 688 001.
- 2 THE JOINT COMMISSIONER (APPEALS) II
KERALA STATE GOODS AND SERVICES TAX DEPARTMENT,
KOLLAM - 691 002.
- 3 THE COMMISSIONER OF STATE TAXES,
KERALA STATE GOODS AND SERVICES TAX DEPARTMENT,
TAX TOWERS, KILLIPPALAM,
KARAMANA P.O., THIRUVANANTHAPURAM - 695 002.

BY SMT.THUSHARA JAMES, SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.12.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner has approached this Court being aggrieved by the cancellation of registration granted to the petitioner under the provisions of the CGST / SGST Acts. The brief facts necessary for the consideration of the issues raised in this writ petition will indicate that the petitioner was issued with Ext.P1 show cause notice calling upon the petitioner to show cause as to why the registration granted to the petitioner shall not be canceled for failure to file returns for a continuous period of six months. The petitioner did not respond to the show cause notice and Ext.P2 order dated 05.05.2022 was issued under Section 29 of the CGST / SGST Acts canceling the registration granted to the petitioner. The petitioner did not file any application for revocation as provided for in Section 30 of the CGST / SGST Acts, but instead approached the appellate authority by filing an appeal under Section 107 of the CGST / SGST Acts. The appeal was filed on 30.08.2022 within time. The appeal of the petitioner has been rejected by Ext.P3 order dated 06.09.2022 finding essentially that the appellate authority has no power to interfere with an order issued under Section 29 of the CGST / SGST Acts and since the petitioner had not filed any application for revocation within the time permitted under section 30 of the CGST / SGST Acts, the appellate authority has no option but to reject the appeal.

2. Adv. Harisankar V Menon, the learned counsel appearing for the

petitioner would contend firstly that the finding in Ext.P3 order of the appellate authority that the appellate authority has no power to interfere with an order of cancellation and the only remedy available to an assessee who suffers an order of cancellation is to apply for revocation is contrary to law. He refers to the judgment of the Supreme Court in **Commissioner of Income tax vs. Kanpur Coral Syndicate** [(1964)53 ITR 225(SC)] to contend that the power of the appellate authority is co-terminus with that of the original authority. He also contends that a reading of Section 30 of the CSGT / SGST Acts will show that the option of filing an application for revocation is not mandatory, but is only directory as is indicated by the use of the word 'may' in Section 30 instead of the word 'shall' . It is submitted that the judgment of the Supreme Court in **Dhampur Sugul Mills vs. State of U.P** [(2007) 8 SCC 338] that of this Court in **Vijaya Mohini Mills vs. State of Kerala** [(1989)75 STC 63] and that of the Court of Appeal in **Baker Re, Nichols vs. Baker** [(1890)44 Ch D 262 (CA)] will indicate that the use of the words 'may' in a statutory provision generally indicates that the provision is only directory and not mandatory. He relies on the judgments of the Madras High court in W.P.(C)No.20035/22 dated 29.08.2022 and as also the judgment in **Suguna Cut Piece Centre vs. Appellate Dy. Commissioner** [(2022)99 GSTR 386] to contend that no useful purpose will be served by keeping an assessee out of the scheme of the scheme of the GST laws on account of cancellation of registration. He states that every tax law must be viewed as one facilitating business and not as an

oppressive system which prohibits or does not encourage the conduct of business. Finally, he submits that the order of cancellation is bad in law for the reason that it does not carry a document identification number, which has been mandated in terms of Ext.P5 circular issued by the Government of India as also the view taken by the Supreme Court in W.P (C) No.320/2022 (judgment dated 18.07.2022).

3. The learned Senior Government Pleader would submit that there is no dispute that the petitioner failed to file returns for the specified period and therefore there is no illegality whatsoever in the order of cancellation. It is submitted that the procedure contemplated by law was followed before completing the proceedings against the petitioner. It is submitted that the petitioner did not apply for revocation within the time specified in Section 30 and also did not file any appeal within the time.

4. Having heard the learned counsel for the petitioner and the learned Senior Government Pleader for respondents, I am of the view that this writ petition is liable to be allowed. The show cause notice issued to the petitioner in this case is produced as Ext.P1. A perusal of Ext.P1 shows that the same has been issued in Form GST Reg 31, which is the form for issuing a notice regarding suspension of registration. That apart the reasons set out in proposing cancellation of registration is as follows:

“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:

Returns furnished by you under Section 39 of the Central Goods and Services Tax Act, 2017

Observations

Failure to furnish returns for a continuous period of six months.

You are hereby directed to furnish a reply to the notice within thirty days from the date of service of notice.”

The notice is absolutely vague and it is not clearly specified with any clarity, the reasons for proposing cancellation even the period for which there was alleged failure to file returns is not specified. I have in my judgment in W.P (C) No.28783/2022 held as follows:-

“5. Having heard the learned Senior Counsel for the petitioner and the learned Senior Government Pleader and Adv.Alfred, learned counsel appearing for the 2nd respondent, I am of the view that the petitioner is entitled to succeed. The reasons which compel me to take such a view are the following: -

(i) Ext.P5 show cause notice issued to the petitioner has been issued in Form GST REG-31. That form is to be issued in relation to proceedings for suspension of registration and is issued with reference to Rule 21A of the CGST/SGST Rules. It is clear that Form GST REG-31 is one relatable to proceedings for suspension of registration and cannot be treated as a show cause notice under Rule 21 of the CGST Rules, which requires the issuance of a notice

in form GST REG-17. Ext.P5 does not even contain all the details contemplated by the form appended to the Rules. A reading of Ext.P5 suggests that the Officer issued the notice in form GST REG-31 by omitting specific details from the form and by treating it as a notice for cancellation. It is a principle at the heart of administrative law that where the law requires a thing to be done in a particular manner, it must be done in that manner alone. In ***Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422***, it was held:-

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor [(1875) 1 Ch D 426 : 45 LJCh 373] which was followed by Lord Roche in Nazir Ahmad v. King Emperor [(1936) 63 IA 372 : AIR 1936 PC 253] who stated as under:

“[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098] and again in Deep Chand v. State of Rajasthan [AIR 1961 SC 1527 : (1962) 1 SCR 662] . These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57] and the rule laid down in Nazir Ahmad case [(1936) 63 IA 372 : AIR 1936 PC 253] was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

Therefore, the action taken by the officer by initiating proceedings in form GST REG-31 of the CGST Rules and completing the

proceedings for cancellation of registration by issuing Ext.P1 order is clearly without jurisdiction. If the Officer wishes to initiate proceedings for cancellation of registration, he must issue a notice as specified in Rule 21 of the CGST Rules and in form GST REG-17 and not in form GST REG-31.

(ii) The Division Bench of the Gujarat High Court in ***Aggarwal Dyeing and Printing*** (Supra) has considered an almost identical situation. The Court considered the contents of the show cause notice issued in that case and came to the conclusion that the show cause notice was woefully inadequate inasmuch as it did not specify the reasons which compelled the Officer to initiate action for cancellation of registration. Even in the facts of this case, the show cause notice (Ext.P.5) reads thus:-

“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. returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017*

Observations

*Failure to furnish returns for a continuous period of six months
You are hereby directed to furnish a reply to the notice within thirty days from the date of service of this notice.*

xx xx xx xx xx xx”

Apart from the fact that Ext.P.5 is issued in the wrong form, it is also

bad for the complete absence of any detail. It is clearly vague and therefore the law laid down in the judgments of the Gujarat High Court in ***Aggarwal Dyeing and Printing (supra)*** and ***Sing Traders (supra)*** clearly apply. I am in respectful agreement with the views expressed in those decisions. The judgments of the Karnataka High Court and the Madhya Pradesh High Court relied on by the learned Senior Government Pleader appear to have been handed down in completely different fact situations. I am also not inclined to follow the law laid down by the Court in those judgments;

(iii) The contention taken by the learned Government Pleader that since the Court deals with fiscal legislations, the law must be strictly interpreted in favour of the revenue is not a principle that applies to the situation that this Court is concerned. The Constitution Bench of the Supreme Court in ***Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and others; (2018) 9 SCC 1***; held that provisions of a taxing statute have to be strictly construed in favour of the assessee in the event of doubt or ambiguity while exemption notifications granting concessions or exemptions have to be generally interpreted in favour of the revenue, again in the case of ambiguity. However, the Supreme Court in ***Government of Kerala and another v. Mother Superior Adoration Convent; (2021) 5***

SCC 602 has taken the view that where concessions or exemptions are granted with a specific purpose of promoting or encouraging a certain activity the principle that such concessions/exemptions must be interpreted in favour of the revenue does not apply. In the facts of these cases, this Court is concerned with the provisions of Sections 29/30 of CGST/SGST which gives to the power to cancel registration and also to revoke it. These are not provisions which need to be interpreted with reference to the principles laid down in the ***Dilip Kumar (supra)*** and in ***Mother Superior Adoration Convent.***”

For the above reasons, the writ petition is allowed. Ext.P2 stands quashed. The quashing of the impugned order of cancellation will not have the effect of absolving the petitioner of any fiscal liability. The petitioner will be required to file all defaulted returns together with tax, late fee, interest, penalty etc., within a period of two weeks from the date on which the registration of the petitioner is restored in compliance with this judgment.

Any other contentions taken in the writ petition are left open.

Sd/-
GOPINATH P.
JUDGE

APPENDIX OF WP(C) 29807/2022

PETITIONER EXHIBITS

Exhibit P1	COPY OF SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT DTD.04-04-2022
Exhibit P2	COPY OF ORDER ISSUED BY THE 1ST RESPONDENT DTD. 05-05-2022
Exhibit P3	COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DTD. 06-09-2022
Exhibit P4	COPY OF NOTIFICATION NO. 15/2021 CENTRAL TAX DTD. 18-05-2021
Exhibit P5	COPY OF CIRCULAR NO. 148/04/2021 GST DATED 18-05-2021
Exhibit P6	COPY OF JUDGMENT OF THE MADRAS HIGH COURT DTD. 29-08-2022
Exhibit P7	COPY OF JUDGMENT OF THIS HON'BLE COURT DTD. 06-07-2022