

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 18201 of 2022**

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**JATIN BHAGWATLAL SHAH**

**Versus**

**STATE OF GUJARAT**

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Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1

for the Respondent(s) No. 1

MS POOJA ASHAR, ASST.GOVERNMENT PLEADER for the Respondent(s)  
No. 1,2,3

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**CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI**

**and**

**HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

**Date : 22/12/2022**

**ORAL ORDER**

**(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)**

1 This is a petition challenging the order dated 20.08.2022 passed under section 107 of the Central/Gujarat Goods and Services Tax Act, 2017 (GST Act) confirming cancellation of registration certificate under the GST Act. The Authority proceeded to dismiss the appeal by order dated 20.08.2022. It is also averred that the order of cancellation of registration is also non-speaking. It is cancelled on the ground that the petitioner did not remain present even though, admittedly, the petitioner submitted the reply and no opportunity of hearing was given. The

registration of the petitioner stood suspended from 29.01.2022. He was present at the time of spot visit and did explain to the authority. However, his appeal came to be dismissed and he is before this Court. The petitioner has no other remedy. Retrospective cancellation of the registration of certificate, according to him, is causing a cascading effect and, hence, this petition with the following reliefs:

“33. In view of the aforesaid premises, the Petitioner humbly prays that:

**RELIEFS CLAIMED**

A. This Hon'ble Court may be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ or order quashing and setting aside impugned order dated 20.8.2022 (annexed at Annexure A) passed by Respondent No.2 as well as impugned order dated 19.3.2022 (annexed at Annexure J) passed by the Respondent No.3;

B. This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or order directing the Respondents to forthwith restore the registration certificate of the Petitioner under the GST Acts;

C. Without prejudice to the above and in the alternative this Hon'ble Court may be pleased to declare that impugned order dated 19.3.2022 (annexed at Annexure J) passed by the Respondent No.3 canceling registration certificate of the Petitioner under the GST Acts will operate only prospectively with effect from date of order of cancellation;

D. Pending, notice, admission and final hearing of this petition,

this Hon'ble Court may be pleased to stay the retrospective operation of the impugned order dated 19.3.2022 (annexed at Annexure J) canceling the registration certificate of the Petitioner under the GST Acts;

E. Ex parte ad interim relief in terms of prayer D may kindly be granted;

F. Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioners shall forever pray."

2 Affidavit-in-reply is filed denying all paragraphs.

3 It is not in dispute that the petitioner has challenged the order of 20.08.2022 passed under section 107 of the GST Act confirming the order of cancellation of registration of certificate under the GST Act on the ground that despite justification provided by the petitioner, the same is not considered. The spot visit of principal place of business was conducted by respondent authorities on 14.12.2021, 15.02.2022 and 09.05.2022 by the authorised officer, but he did not find any stock, register of accounts or infrastructure. Hence, on 26.04.2022, the petitioner was intimated about the spot visit to be conducted at the principal place of business. According to the petitioner, the proceedings under section 67 are on going. Without

prejudice to this proceedings, if the revocation of registration is ordered in favour of the petitioner, the same shall not affect the interest of the Revenue.

4 Affidavit-in-rejoinder is filed by the petitioner, where it challenges the cancellation of registration and that too with retrospective effect only on the basis of minor procedural difficulty. The spot visit was without giving notice to the petitioner. He was not present at the place of business and, therefore, the same was closed and adverse inference is drawn from that. The tenure of such agreement being till 30.11.2022 is hardly relevant. Sales invoice produced by the petitioner for the period prior to 31.12.2021 is before the date of change of premises.

5 This Court has extensively heard learned advocate Mr. Uchit Sheth, learned advocate for the petitioner and Ms.Pooja Ashar, learned Assistant Government Pleader for the respondent.

6 The petitioner had vacated its old premises and cancelled the rent agreement from 31.12.2021. He has

shifted to the new premises on rent from 01.01.2022. However, formally rent agreement was executed on 31.01.2022. In the meantime, show cause notice issued to the petitioner was proposed to cancel the registration certificate on the ground that the assessee had not filed the return under the GST Act for continuous period of six months. The show cause notice had been issued on 29.01.2022 proposing to cancel the registration on the ground that he was not found functioning at the principal place of business. The same was replied to by the petitioner pointing out that he has already shifted to a new place and had vacated the old one on 31.12.2021.

7 Thereafter, the assessee was given notice fixing the date of hearing of the matter on 19.03.2022. The authority did not hear him and his registration was retrospectively cancelled on the ground that he did not appear on the day fixed for hearing.

8 The petitioner applied for revocation on 09.04.2022 for rejection of application for revocation. The show cause



notice was issued on 13.04.2022. The proof of running business was sought for from the petitioner.

8.1 On 25.04.2022 the petitioner relied to the show cause notice from the new premises. Hence, the same were yet to be made as the registration certificate of the petitioner stood suspended and, thereafter, cancelled. On 26.04.2022, the petitioner received notice for spot verification. The petitioner was very much present at the time of spot visit. The authority noticed absence of stock at the premises and the petitioner explained that for the past three months, because of cancellation of registration certificate under the GST Act, stock register was duly shown to the authority. Application for revocation of cancellation was rejected by reproducing the contents of the show cause notice.

9 The petitioner filed the appeal under section 107 of the GST Act. Learned advocate appearing for him was not heard and the appeal was dismissed.

10 It is quite apparent from the material, which is placed on the record that the cancellation of registration

certificate is contrary to law. It is a non-speaking order, which cancelled the registration on the ground that he did not remain present even though he did submit the reply. Thus, cancellation of registration without assigning any reason is wholly mechanical and stereotyped. He has explained that it is already on record that he has shifted to another premises from 01.01.2022. The day the premises was visited, he was not intimated and assuming that it may not be necessary, the fact remains that he has explained and when he appeared before the respondent authority along with the documents so far as the financial transactions are concerned. The very order, which is impugned in this petition when is considered, it is very cryptic and hence, following the decision of ***Agarwal Dying and Printing Works vs. State of Gujarat, (2022) 137 Taxmann.com 332(Gujarat)*** indulgence is necessary.

11 Again, it needs to be pointed out that the petitioner concerned had shifted to another premises and, hence,

he simply cannot be found at the old address. In absence of any intimating during the spot visit, if it was difficult for him to remain present because of the shift in the office, the cancellation of registration with the retrospective date is fully impermissible.

- 12 Resultantly, the petition is allowed, quashing and setting aside the order dated 20.08.2022 passed by respondent No.2 and order dated 19.03.2022 canceling registration certificate of the petitioner is also quashed and set aside and the registration certificate of the petitioner is thereby restored.



(MS. SONIA GOKANI, J. )

SUDHIR

(MAUNA M. BHATT,J)