

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20505 of 2022

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NEHA ENTERPRISE
Versus
STATE OF GUJARAT

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Appearance:

MR MAULIK NANAVATI ASSISTED BY MS MANVI DAMLE FOR NANAVATI
& CO.(7105) for the Petitioner(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 MR. JUSTICE SANDEEP N. BHATT

Date : 19/01/2023

ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The petitioner is challenging the proceedings initiated by way of show cause notice dated 10.05.2022 issued by the department, which culminated into cancelling the registration of the petitioner firm under the provisions of the Central Goods and Services Tax Act, 2017 ('the CGST Act' hereinafter).

2. Brief facts leading to the present petition are as follow:

2.1 The petitioner is registered under the Gujarat Goods and Service Tax Act, 2017 ('the GGST Act' hereinafter) having the Goods and Service Tax Identification No.24DHWPK1820G1ZA. The show cause notice dated 10.05.2022 came to be issued by the department in Form GST REG-17/31. This is in exercise of the powers under Section 29 of the CGST Act read with Rule 22(1) of the Central Goods and Service Tax Rules, 2017 ('the CGST Rules' hereinafter). The show cause notice had not been sent to the petitioner physically nor any notice has been received by the petitioner by post or at his registered address.

2.2 Another grievance on the part of the petitioner is that no other document has been uploaded except the single page notice. For any allegation to be substantiated no reason is also reflected for the petitioner to meet with the challenge. The petitioner was asked to appear in person failing which on ex-parte basis this was to be decided on the basis of the available record. No time for personal hearing was granted and the show cause notice did not mentioned the name and designation of the person issuing the notice before whom and what time and place the petitioner needed to appear.

2.3 Although, it was extremely difficult for the petitioner, it is still attempted

to upload on a portal a short reply stating that the notice was unintelligible for any prudent person to reply.

2.4 On 25.05.2022, the State Tax Officer, Ghatak 23(Ahmedabad) passed an order cancelling the registration of the petitioner firm. The order of cancellation did not record any reasons for cancellation of the GST registration and mentioned that the order of cancellation is as per the attached order. The order did not assign any particular reason for cancellation.

2.5 An application was preferred on 15.06.2022 seeking revocation of cancellation of registration. The department on 01.08.2022 rejected the application of the petitioner.

2.6 Aggrieved petitioner preferred the present petitioner with the following prayers:

“6...

(a) To issue a writ in the nature of certiorari and or any other appropriate writs, order or direction for calling of records of proceedings initiated pursuant to show cause notice dated 10.05.2022 and after perusing the same be pleased to quash and set aside show cause notice dated 10.05.2022 and order dated 25.05.2022 passed thereon by State Tax Officer, Ghatak 23, Ahmedabad, and be further pleased to direct restoration of registration bearing number 24DHWPK1820G1ZA;

(b) To pass an exparte ad interim order stating the operation, execution and implementation of the order dated 25.05.2022 bearing reference no.ZA240522131719M passed by State Tax Officer, Ghatak 23, Ahmedabad, pending the hearing and final disposal of present petition, and

(c) Grant such further and other interim reliefs, as this Hon'ble Court may deem fit and proper in the present nature and circumstances of the case.”

3. This Court issued the notice on 12.10.2022 to the respondent authority.

4. Affidavit-in-reply is filed by the State Tax Officer, Unit-23 denying all allegations.

4.1 It is contended that the spot verification at the principal place of business was conducted on 07.05.2022, the same was found closed and non-functioning. The petitioner was contacted on his registered mobile No.9913883352, however, he could not be contacted as his number was switched off. He also did not support the on-going investigation nor had he given any statement in consonance with the requirement.

4.2 He was served with the detailed show cause notice, which was served through the RPAD to the principal place of the business of the petitioner as also through the Whatsapp on registered mobile phone.

4.3 It is further averred that after the show cause notice was served, the petitioner uploaded the online reply along with the copies of PAN Card, Aadhar Card, Rent Agreement and photograph of the place of business. No detailed response against the transaction was given by the petitioner. It was noticed during the course of inspection that the petitioner was engaged in bogus billing transaction of total taxable value of Rs.14,98,14,786/- which is circulated transaction and there

are no equivalent purchases found against the sales shown. Since he choose not to remain present, the order of cancellation of registration was passed, which was duly uploaded on the portal along with the auto generated order.

4.4 It is further contended that he suppressed the material fact that on 15.06.2022 he preferred an application for revocation under Section 30 of the Act against which the detailed query was raised on portal on 12.07.2022, however, it provided no document in proof of the legality of transactions and thus, in absence of any proof the order of revocation of order of registration was passed rejecting the application. The

petitioner failed to avail the alternative remedy which is provided to him by way of an appeal under Section 107 of the GST Act.

5. Affidavit-in-rejoinder was found not necessary and this Court heard at length learned advocate, Mr.Nanavati assisted by the learned advocate, Ms.Manvi Damle and learned AGP, Ms.Pooja Ashar for the State of Gujarat.

6. It was much argued by the learned advocate, Mr.Nanavati that there had been no uploading of the show cause notice on the portal moreover, if there was a field visit there ought to have been uploading of the photographs along with the document sent report as required under Rule 25 which has not been done in the instant case. He

has also further urged that the petitioner that there is no certificate obtained of due service of registered A.D. from the postal department. The presumption, according to him, will not be available as the petitioner has discharged his part of the duty relying on Section 169 of the GST Act. He has also taken much exception to the service through the Whatsapp by urging that, that is not the mode permissible under the law. While arguing on Rule 142 it is urged that the proper officer is required to serve along with the notice issued under Sections 52, 73, 74, 76, 122, 123, 124, 125, 127, 129 and 130 summary thereof electronically informed GST DRC-01. According to him Rule 22(1) provides that where proper officer has reason to believe

that registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in Form GST REG-17 requiring him to show cause. It is provided thus: "in case registration has been obtained by means of fraud, willful misstatement or suppression" we are directed to furnish a reply to the show cause notice."

7. The order of cancellation was passed on 25.05.2022, which refers to the order *"as per the attached order."*

8. According to the learned AGP, show cause notice was issued as everything was found fraudulent due to technical glitch the show cause notice was not uploaded, however, it was sent through the RPAD,

which is reflected in the record. No appeal has been filed under Section 107. Reliance is placed on the decision of the Apex Court in case of ***State of Maharashtra and others vs. Greatship (India) Limited***, reported in ***2022 LiveLaw (SC) 784***. She has also further relied on paras 9.3 and 14 of ***Aggarwal Dying and Printing Works vs. State of Gujarat***. The decision of the Andhra Pradesh High Court also has been relied upon.

8.1 According to her, the decision of Andhra Pradesh High Court also will help cause of the revenue. On the issue of due service through Whatsapp, she has relied on the decision of the Apex Court on Sue Moto in Recognizence for Extension of Limitation 3/20.

9. With regard to the question of alternative remedy, the Apex Court in case of the *State of Maharashtra and others vs. Greatship (India) Limited (supra)* has held that the entertainability of a writ petition under Article 226 of the Constitution of India by bypassing the statutory remedy is not desirable. The Court has in extenso referred to various decisions to hold that the question is not about the maintainability of the writ petition under Article 226 of the Constitution of India, but the question is about entertainability against the order of assessment by bypassing the statutory remedy of appeal. There is no valid reason that had been shown by the assessee to bypass the statutory remedy of appeal.

Therefore, the Court held that when there is an alternative remedy available, judicial prudence demands that the Court must refrain from exercising its jurisdiction under the said constitutional provisions.

10. The petitioner, in the instant case, is before this Court stating that the factual aspects in a robust way speak of the violation of principle of natural justice, not only the same has been averred, it has also been demonstrated. Therefore, while being conscious of the fact that when there is an alternative remedy available, ordinarily writ jurisdiction is not to be entertained. The question is about the very basis of notice which according to this

Court is quite hollow and shaky. It is a cryptic 'one line' notice.

10.1 This notice which has been given under Section 29 Rule 22(1) of the GST Rules is required to be uploaded. Every action under the GST, the State expects the assessee to upload. Here, on the ground of the technical glitch could not be uploaded. For taking the action against the person or assessee, who is acting against the law ample powers have been given under the GST Act to the officers. However, the procedures which are required to be followed shall need to be followed in accordance with law. This Court in ***Aggarwal Dying and Printing Works (supra)*** has in no uncertain terms deprecated the

action of the respondent authority in issuing a cryptic notice, which is either 'one liner' or of 'half a line'. This weak foundation is made the reason for the cancellation of registration of the petitioner.

11. The question was with regard to the notice, which according to the petitioner, has not been received through the registered post. Even if, the court takes recourse to section 169 of the GST Act, which is a deeming provision when order, summons, notice or any communication sent by the registered post or the speed post, it can be presumed that after the expiry of the period when normally such post would reach, the same must have reached to the petitioner.

12. This Court notices that the receipt of registered post is dated 12.05.2022. The notice is originally of 10.05.2022, however posted on 12.05.2022 it may take about three to four days, seven days is prescribed under the law for the assessee to reply from the date of receipt of notice. This is a notice, which even is presumed to have reached on 17.05.2022, the order of cancellation of registration is of 25.05.2022. The acknowledgment receipt of the post sent through the register A.D. post is not on record. The respondent has failed to bring it on the record as the State has woken up at a belated stage and the postal department would not retain it beyond the period of three months. Even if, it is presumed to have received because the

same has been sent and the presumption is provided under Section 169(3) of the GST Act and also the foundation is too shaky for this Court to allow the State to build any structure on it. Therefore, show cause notice and the order of cancellation of registration need to be interfered with. We also need to make a specific mention of Rule 25, the document of which is forming the part of the record as the spot visit which has taken place on 07.05.2022 at the principal business premise of the petitioner, which is shown to be closed and the proprietor not being available, Rule 25 provides for verification to be done of the business premise in the presence of the person and the report along with other documents including the photographs to be

uploaded in FORM GST-REG 30 on the common portal within the period of 15 working days following the date of such verification, nothing of the showed has happened. In fact credibility of the petitioner is questioned on the ground that the business premise has remained close however, the respondent has not followed the required procedure so far as the spot visit is concerned. This serious lapses or breach of fulfillment of the provisions also further vindicate the need of interference on the part of this Court.

13. As a parting note, it needs to be mentioned that much was debated on issuance of this notice through the Whatsapp and reliance is placed on the decision of the Apex Court in *Suo Motu* Petition 3 of 2020,

we need to make a mentioned that the Court referred to Whatsapp, telegram, signal, etc. as the instant messaging services at the time when the physical delivery of notices, the post offices, courier company, etc. could not be visited due to the COVID-19 lock-down. Moreover, while so permitting the Court had also directed in addition, the parties to effect the service of such document by e-mail on the very date. And the provision itself is either for the postal through the speed post or registered A.D. post and hence, those two modes are to be required to be served.

14. Here, the service is said to have been effected through the registered A.D.post in wake of the glaring circumstances and more

particularly, extremely weak foundation of the content of the notice, which this Court in Aggarwal Dying has not sustained. This petition deserves to be allowed quashing and setting aside the subsequent actions of the authority.

15. In the decision of ***Aggarwal Dyeing and Printing Works (supra)*** this Court after considering the scheme of Act as well as the procedure contemplated under the provisions of the Act for cancellation of registration has held as under:

“10. Thus, upon appreciation of the scheme of Act, where specific forms have been prescribed at each stage right from registration, cancellation and revocation of cancellation of registration, the same are to be strictly adhered too. At the same time, it is equally important that the Proper Officer empowered under the said Act adheres to the principles of natural justice.

11. At the outset, we notice that it is settled legal

position of law that reasons are heart and soul of the order and non communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice. This Court is bound by the said judgments hereinafter referred to. The necessity of giving reason by a body or authority in support of its decision came for consideration before the Supreme Court in several cases. Initially, the Supreme Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of the supreme Court in A.K. Kraipak v. Union of India [1970] 1 SCR 457. The Hon'ble Supreme Court vide judgments in the cases of Ravi Yashwant Bhoir v. District Collector, Raigad [2012] 4 SCC 407, Sant Lal Gupta v. Modern Cooperative Group Housing Society Ltd. [2010] 13 SCC 336; Kranti Associates (P) Ltd. vs. Masood Ahmed Khan [2010] 9 SCC 496; Abdul Ghaffar vs. State of Bihar [2008] 3 SCC 258, has expanded the horizon of natural justice and reasons have been treated part of the natural justice. It has gone to the extent in holding that reasons are heart and soul of the order. The absence of reasons renders an order indefensible/unsustainable particularly when it is subject to appeal/revision. It is to be noted that in the case of Kranti Associates (P) Ltd. (supra), the Hon'ble Supreme Court after considering various judgments formulated certain principles which are set out below:

“a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these

days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny.

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making the said requirement is now virtually a component to human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553 at 562 para 29 and

Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions.”

o. In all common law jurisdictions judgment play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “Due Process”.

Thus, the position of law that emerges from the decisions mentioned above, is that assignment of reasons is imperative in nature and the speaking order doctrine mandates assigning the reasons which is the heart and soul of the decision and said reasons must be the result of independent re-appreciation of evidence adduced and documents produced in the case.

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 v. Commissioner of Labour 2014 (3) ALT 265, 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.”

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19.. In the result, all the writ applications deserve to be allowed solely on the ground of violation of principles of natural justice and, accordingly, the writ applications are allowed. We quash and set aside the respective show cause notices of all the writ applications, seeking cancellation of registration as well as the consequential respective impugned orders cancelling registration with liberty to the respondent No. 2 to issue fresh notice with particulars of reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the writ applicants, and to pass appropriate speaking orders on merits. It is needless to mention that it shall be open for the writ applicants to respond to such notices by filing objections / reply with necessary documents, if relied upon. We clarify that we have not gone into merits of the case.”

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17. Resultantly, following the Coordinate Bench's decision in case of Aggarwal Dyeing & Printing Works (supra), this petition is **ALLOWED** solely on the ground of violation

of the principles of natural justice. The impugned order dated 25.05.2022 bearing reference No.ZA240522131719M passed by the respondent No.2 is quashed and set aside granting liberty to the respondent No.2 to re-issue the show cause notice dated 10.05.2022 with particular reasons incorporated with details through its registered email address on khatikparash1@gmail.com, parashkhatik7029@gmail.com, khatikparash9913@gmail.com as well as through RPAD and thereafter to provide reasonable opportunity of hearing to the writ applicant and to pass appropriate speaking order on merit which shall be done physically as directed in the very decision. With the aforesaid, the GST Registration Number of the applicant stands

restored forthwith and decide the matter by following the procedure of law.

18. None of the observations made here will prejudice the right of either side.

M.M.MIRZA

(SONIA GOKANI, J)

(SANDEEP N. BHATT,J)

