

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 2409 of 2023**

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SOHILBHAI SDDIQBHAI AADMANI

Versus

SUPERINTENDENT, CENTRAL GOODS AND SERVICE TAX

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Appearance:

HIREN J TRIVEDI(8808) for the Petitioner(s) No. 1

MR SIDDHARTH H DAVE(5306) for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV**

and

**HONOURABLE MR. JUSTICE DEVAN M. DESAI****Date : 28/07/2023****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE DEVAN M. DESAI)**

[1] By way of this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:-

*“14(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or any other writ, orders or directions to quash and set aside order dated 17.08.2022 (at Annexure-F) canceling the registration certificate of the petitioner as well as show cause notice dated 04.08.2022 (at Annexure-C);*

*(B) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, orders or directions directing the respondents to forthwith restore the*

*registration certificate of the petitioner;*

*(C) During the pendency and final disposal of the present petition YOUR LORDSHIPS may be pleased to stay operation, implementation and execution of order dated 17.08.2022 (at Annexure-F) and further be pleased to direct responds to forthwith restore the registration certificate of the petitioner;*

*(D) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case.*

[2] Since, the issue involved in the present petition is in a very narrow compass, learned advocates for the parties have agreed for taking up the matter for final hearing.

[3] Heard learned advocate Mr.Hiren Trivedi for the petitioner and Mr.Siddharth Dave for the respondent.

[4] Rule. Learned advocate Mr.Siddharth Dave waives service of notice of rule for and on behalf of respondent.

[5] The brief facts of the case are as under:-

5.1 The petitioner is engaged in the business of trading of ferrous, non-ferrous metal, machineries and has been registered as per the provisions of Section 22 of the Central Goods and Services Tax Act, 2017 and also having Registration No.24AFEPA87991ZQ.

5.2 On 25.07.2022, a search operation was carried out at the business place of the petitioner, no illegality was found by the respondent. However, summons under Section 70 of the said Act, came to be issued asking the petitioner to remain present on 29.07.2022. The petitioner submitted all the necessary documents. The Books of Accounts and other documents were returned by the respondent authority to the petitioner.

5.3 A show cause notice dated 04.08.2022 under Section 29 of the said Act read with Rule 22(1) of the Rules, came to be issued to the petitioner, *inter alia*, alleging that the Registration has been obtained by means of fraud, willful misstatement or suppression of facts. The said show cause notice was silent on the aspect of reasons. The petitioner was called upon to reply on 11.08.2022. The petitioner submitted an online

response on 10.08.2022 to the said notice and denied the allegations made under show cause notice.

5.4 It is the case of the petitioner that Registration was obtained in due course of law and the petitioner further alleges that the said show cause notice is not clear and it is cryptic. The petitioner also sought for personal hearing. The petitioner also filed detailed submissions on 17.08.2022 and requested to the respondent to provide all evidences, upon which, the respondent has issued the aforesaid show cause notice. However, on 17.08.2022, the respondent passed an order without providing any material and pursuant to the said order, Registration of the petitioner was canceled *ab-initio* w.e.f. 26.04.2018. The said order does not determine what amount to be payable by the petitioner. It is also the case of the petitioner that the order was passed without supplying any reason for cancellation of Registration under Section 29(2)(e) of the said Act.

5.5 The petitioner thereafter filed an application for revocation of cancellation of Registration on 28.08.2022 under Section 30 of the Act and Rule 23 of

the Rules in Form GST REG-21. The petitioner also filed a detailed application dated 25.08.2022 alongwith online application.

[6] Learned advocate for the petitioner has submitted that the Act envisages the procedure for cancellation of Registration and also provides for revocation of cancellation. Learned advocate for the petitioner has further submitted that the impugned show cause notice is cryptic, without any reason, and hence, the same is required to be quashed and set aside.

6.1 It is further submitted by the learned advocate for the petitioner that while issuing a show cause notice, the authority has erroneously assumed the existence of jurisdictional facts, however, no such jurisdictional facts exist.

6.2 Learned advocate for the petitioner has submitted that the petitioner had submitted all the relevant information and documents, as sought for, by the respondent. The petitioner had also asked for the details and reasons based upon which, the impugned show cause notice dated 04.08.2022, was issued. However,

the respondent authority did not provide any material and passed the impugned order dated 17.08.2022, which is bad in law.

6.3 It is submitted by the learned advocate for the petitioner that the application for revocation under Section 30 of the Act and Rule 23 of the Rules, though filed by the petitioner, till date, no actions have been taken by the respondent authority. It is further submitted by the learned advocate for the petitioner that the order impugned is in breach of principles of natural justice, and hence, it is required to be quashed and set aside.

6.4 Learned advocate for the petitioner has further submitted that the issue involved in the present petition is no more *res-integra* in view of the the decision rendered by the Co-ordinate Bench of this Court in the case of ***Om Trading Vs. State of Gujarat*** in Special Civil Application No.8990 of 2023 on 21.06.2023, wherein the Co-ordinate Bench of this Court has quashed and set aside the impugned order. Learned advocate for the petitioner has placed on record the order dated

21.06.2023 passed in the case of Om Trading Vs. State of Gujarat in Special Civil Application No.8990 of 2023. While deciding the said petition, reliance has been placed upon the case of *Aggrawal Dyeing and Printing Works Vs. State of Gujarat & Ors.* passed in Special Civil Application No.18860 of 2021 decided on 24.02.2022 and allied matter.

6.5 Learned advocate for the petitioner has also placed reliance upon the decision of this Court in the case of **Sona Metals Vs. State of Gujarat** passed in Special Civil Application No.25221 of 2022 decided on 15.06.2023.

[7] Per contra, learned advocate Mr.Siddharth Dave for the respondent has vehemently opposed and submitted that the petition is meritless and show cause notice and order passed thereunder, are legal and valid. It is further submitted by the learned advocate for the respondent that the order for cancellation of Registration dated 04.08.2022 is passed containing reasons and the same is as per the provisions of law. So far as the decision rendered in the case of *Om Trading Vs. State of Gujarat* passed in Special Civil Application No.8990 of

2023 order dated 21.06.2023, there is no much resistance from the respondent.

[8] We have heard the learned advocates for the parties and perused the materials placed on record. It is pertinent to note that a show cause notice of cancellation of Registration dated 04.08.2022, is without any reason and it is one line show cause notice which reads as under:-

*“in case, Registration has been obtained by means of fraud, willful misstatement or suppression of facts.”*

[9] In our view, such show cause notice is without any basis and there is no reason assigned in arriving at the conclusion for cancellation of Registration. It seems that before the order for cancellation of Registration, the respondent authority has not taken into consideration the reply dated 17.08.2022 given by the petitioner to the respondent authority. It transpires that on the same day i.e. on 17.08.2022, the order for cancellation of Registration came to be passed. The request for an opportunity of being heard in person was not accorded to the petitioner, though asked for.



[10] The Co-ordinate Bench of this Court has passed an order in the case of *Om Trading (supra)* and observed in para 10 as under:-

[10] Recently, this Court has passed the order in the similar type of case of *Sona Metals (supra)* and observed in para 12 as under:-

*“12. In similar type of cases, this Court has considered such type of show cause notice, which was issued for cancellation of registration and this Court, after considering the decision rendered in case of Aggrawal Dyeing (supra), has allowed the writ petition being Special Civil Application No.903/2022 by an order dated 07.06.2023. This Court in the said order has observed in Paragraph Nos.9, 10, 11, 12 and 13 as under,*

*“[9] The respondent authorities issued impugned show-cause notice dated 06.01.2023 which reads as under:*

*“Form GST REG-17  
[See Rule 22(1)/sub-rule (2A) of rule 21A]*

*Reference Number:ZA2401230353816*

*Date :06/01/2023*

*To*

*Registration Number (GSTIN/Unique ID):24HSVPS8030J1ZX  
BALVINDER SINGH  
JAY BAJRANG CO OP HOS SOC,  
SHOP NO2, NR SHASHTRI STEDIUM,  
STEDIUM ROAD, Ahmedabad,*

*Ahmedabad, Gujarat, 380015*

***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 In case, Registration has been obtained by means of fraud, willful 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 13/01/2023 at 01:00 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 06/01/2023*

*Place : Gujarat*

*Date : 06/01/2023*

*Signature Not Verified*

*Digitally signed by*

*DS GOODS AND SERVICES*

*TAX NETWORK 07*

*Date: 2023.01.06, 15:31:49 IST*

*[10] From the aforesaid show-cause notice, it is clear that the respondents have not provided in details to the petitioner, how the petitioner has committed fraud, wilful misstatement or suppression of facts; while obtaining the registration, no documents were*

*supplied to the petitioner alongwith the said show-cause notice.*

*[11] This Court has considered in the similar type of case of **Aggrawal Dyeing (supra)** and observed in para 13.1 and 16 as under:-*

*“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.*

*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.”*

*[12] In Special Civil Application No.11262 of 2020, the Division Bench of this Court has considered the similar type of show-cause notice and observed in paras 2, 3, 4, 5 & 6 as under:-*

*“2. Mr. Meena is the signatory of the show cause notice as also the impugned order of cancellation both of which are assailed in the writ petition. We have directed for the appearance of Mr. Meena upon perusal of the show cause notice dated 20.07.2020 (Annexure-H to the petition). Perusal of the same indicates that to such show cause notice no response can be given by any assessee. The show cause notice is as vague as possible and does not refer to any particular facts much less point out so as to enable the noticee to give his reply. The contents of the show cause notice dated 20.07.2020 are reproduced below:*

*“Form GST REG-17  
[See Rule 22(1)]*

*Reference Number:ZA2407200794641*

*Date :20/07/2020*

*To  
INDRESH KUMAR  
3, SOMNATH SHOPPING CENTER,  
SMRUTI MANDIR CANAL ROAD  
GHODASAR, AHMEDABAD,  
Ahmedabad, Gujarat,380050*

***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 In case, Registration has been obtained by means of fraud, willful 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.*

*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*

*Date : 20/07/2020*

*Prem Raj Meena*

*Superintendent*

*Ghatak 18(Ahmedabad):*

*Range-5:Division-2:Gujarat”*

*3 According to learned counsel for the petitioner Mr. Dave, without fixing a date for hearing and without waiting for any reply to be filed by the petitioner, the cancellation order was passed on 30.07.2020 whereby registration of the petitioners with GST department was cancelled. Although the cancellation order refers to a reply submitted by the petitioner and also about personal hearing, but according to Mr. Dave neither he had submitted any reply nor afforded any opportunity of hearing. This fact is not disputed by Mr.Bhatt.*

*4 Mr.Bhatt, learned counsel for the respondent No.2 has sought to explain that some discrepancy occurred on account of some technical glitch in the system (on-line portal). The reply filed by the respondent is on record.*

*5 We are not entering into the merits of the impugned order as we are convinced that the show cause notice itself cannot be sustained for the reasons already recorded above. Therefore, the cancellation of registration resulting from the said show-cause notice also cannot be sustained.*

*6 For the reasons recorded above, the writ petition*

*succeeds and is allowed. The impugned show cause notice dated 20.07.2020 (Annexure-H) and the impugned cancellation order dated 30.07.2020 (Annexure-I) are hereby quashed. With respect to the other consequence that may follow, the parties would be at liberty to take appropriate steps. Mr. Bhatt made request that the Court may grant liberty to proceed afresh. We are not inclined to pass such order, but we only observe that if law permits, the respondent No.2 may proceed afresh in accordance with law.”*

*[13] From the aforesaid order, it reveals that, in the said case as similar type of contentions were raised on behalf of the respondent. However, this Court has quashed and set aside the similar type of show-cause notice issued to the concerned petitioner for cancellation of registration. We are of the view that the present matter is squarely covered by the aforesaid order passed by this Court, therefore, the impugned show-cause notice deserves to be quashed and set aside on the similar grounds.”*

[11] In the present case on hand, it is clear that while issuing show cause notice for cancellation of Registration, necessary documents were not supplied and the notice is cryptic. It is also clear that while passing the impugned order for cancellation of Registration, the respondent authority has not assigned any reason and thus, the order passed by the respondent authority is not tenable at law.

[12] In the aforesaid facts and circumstances of the case and considering the decisions rendered in the case of *Aggrawal Dyeing (supra)*, *Om Trading (supra)* and *Sonal Metals (supra)*, the show cause notice dated 04.08.2022 as well as the order dated 17.08.2022, deserve to be quashed and set aside.

[13] Accordingly, the present petition is **allowed**. The show cause notice dated 04.08.2022 as well as the order dated 17.08.2022, are hereby quashed and set aside. The concerned respondent is hereby directed to restore the Registration of the petitioner forthwith. Rule is made absolute to the aforesaid extent. No order as to costs.

**(BIREN VAISHNAV, J)**

**(D. M. DESAI, J)**

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