

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE HIRDESH

WRIT PETITION No. 21659 of 2022

BETWEEN:-

**M/S ULTRA STEEL WARD NO.17, SHOP NO.1, BUS
STAND, MATGUWA, CHHATARPUR (M.P.) 471301
THROUGH ITS PROPRIETOR RASHID KHAN S/O
RAMJAN KHAN, AGED ABOUT 34 YEARS, R/O
WARD NO.14, SEVA NAGAR, KHAVJA NAGAR
NALLE KE PASS, GWALIOR (M.P.)**

.....PETITIONER

***(BY SHRI MUKESH AGRAWAL – ADVOCATE WITH SHRI AYUSH
GUPTA - ADVOCATE)***

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
ITS SECRETARY, MINISTRY OF COMMERCIAL
TAXES, VALLABH BHAWAN, BHOPAL (M.P.)**
- 2. STATE TAX COMMISSIONER, MOTI BUNGLOW,
MG ROAD, INDORE (M.P.)**
- 3. APPELLATE AUTHORITY & JOINT
COMMISSIONER, STATE TAX, SAGAR, NEXT TO
ZILA PANCHAYAT BHAWAN, SAGAR (M.P.)**
- 4. ASSISTANT COMMISSIONER, STATE TAX,
CIRCLE – CHHATARPUR, CHHATARPUR (M.P.)**

.....RESPONDENTS

(RESPONDENTS BY SHRI A.D. BAJPAI – GOVERNMENT ADVOCATE)

WRIT PETITION No. 22416 of 2022

BETWEEN:-

**M/S BUNDELKHAND TRADERS, SHOP NO.02,
WARD NO.07, GRAM POST PALOTHA,
CHHATARPUR (M.P.) 471001 THROUGH ITS
PROPRIETOR HAJARAT MUHAMMAD, S/O
NOOR MUHAMMAD, AGED ABOUT 57 YEARS,
R/O (MP) NEAR NEELKAMAL CHOURAHA,
BALDEOGARH, DISTRICT - TIKAMGARH (M.P.)
OCCUPATION BUSINESS**

.....PETITIONER

*(BY SHRI MUKESH AGRAWAL – ADVOCATE WITH SHRI AYUSH
GUPTA - ADVOCATE)*

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
ITS SECRETARY, MINISTRY OF COMMERCIAL
TAXES, VALLABH BHAWAN, BHOPAL (M.P.)**
- 2. STATE TAX COMMISSIONER, MOTI BUNGLOW,
MG ROAD, INDORE (M.P.)**
- 3. APPELLATE AUTHORITY & JOINT
COMMISSIONER, STATE TAX, SAGAR, NEXT TO
ZILA PANCHAYAT BHAWAN, SAGAR (M.P.)**
- 4. ASSISTANT COMMISSIONER, STATE TAX,
CIRCLE – CHHATARPUR, CHHATARPUR (M.P.)**

.....RESPONDENTS

**(RESPONDENTS BY SHRI A.D. BAJPAI – GOVERNMENT
ADVOCATE)**

Reserved on : 02.05.2023

Pronounced on : 12.06.2023

These petitions having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble Shri Justice Sheel Nagu pronounced the following:

ORDER

In view of similar issue involved, W.P. No.21659 of 2022 and W.P. No.22416 of 2022 have been heard together and are being disposed of by this common order.

2. For the sake of convenience, facts are taken from W.P. No.21659 of 2022.
3. W.P. No.21659 of 2022 filed under Article 226 of the Constitution of India by an assessee, is essentially against the cancellation of registration under the State Goods and Services Tax Act (SGST) and the consequential orders of dismissal of an application for revocation of cancellation of registration and the dismissal of appeal u/S.107 of the SGST.
4. Learned counsel for rival parties are heard on the question of admission so also final disposal.
- 5 The principal contention of learned counsel for petitioner-assessee is two fold. The first being that the impugned show cause notice dated 28.01.2022 (Annexure P/2) is vague for not supplying the relevant reasons and material while proposing cancellation of registration. The second being

denial of reasonable opportunity of defending himself and replying to the show cause notice thereby breaching the rule of natural justice (*audi alteram partem*).

6. On the basis of aforesaid short submission, learned counsel for petitioner relying upon decision of Apex Court in **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others, (1978) 1 SCC 405**; decision of Indore Bench of this Court in **Health Care Medical Devices Pvt. Ltd. Vs. MP Public Health Services Corpn. Ltd. and another, 2021 SCC OnLine MP 3389**; decision of Delhi High Court in **Balaji Enterprises Vs. Principal Additional Director General, Directorate General of GST Intelligence and Others, 2022 SCC OnLine Del 3201**; and decision of Gujarat High Court in **Vageesh Umesh Jaiswal V. State of Gujarat, [2022] 136 taxmann.com 392 (Gujarat)** submits that since the very foundation (the show cause notice) is violative of principle of natural justice (*audi alteram partem*), the impugned order of cancellation of registration and all subsequent orders passed pursuant thereto are vitiated and are liable to be set aside.

7. Learned counsel appearing for respondents/Revenue by referring to the return submits that on inspection of premises of the petitioner-firm carried out on 10.01.2022, the business activities of petitioner were found to be doubtful, on the basis of which the impugned show cause notice was issued. The return further reveals that another verification of activities of petitioner-firm was carried out by spot inspection during pendency of the appellate proceeding u/S.107 of the SGST. The return, however, is not a para-wise return but a comprehensive one and, therefore, is blissfully silent as to the allegations of violation of principles of natural justice (*audi alteram partem*)

and show cause notice being vague, except by making a bald statement that the principles of natural justice were followed.

8. A bare perusal of the impugned show cause notice dated 28.01.2022 (Annexure P/2) reveals that the reason given for the proposed cancellation of registration was as follows :

“In case, Registration has been obtained by means of fraud, wilful misstatement or suppression of facts.”

Apart from the aforesaid reason shown, no other reasons were assigned nor any supporting material was afforded to petitioner. As such, the petitioner filed reply dated 11.02.2022 which was after 7 days period prescribed in the show cause notice for furnishing of reply. Thereafter, the impugned order of cancellation of registration was passed on 11.02.2022 by which the registration of the petitioner-firm stood cancelled w.e.f. 26.04.2021.

8.1 Interestingly, in the impugned order of cancellation of registration dated 11.02.2022 (Annexure P/4), it is mentioned that reply dated 09.02.2022 was filed by the petitioner pursuant to show cause notice dated 28.01.2022 immediately followed by the following sentence :

“Whereas no reply to notice to show cause has been submitted;”

8.2 It appears from perusal of Annexure P/5 dated 24.02.2022, which is a show cause notice for rejection of an application for revocation of cancellation of registration issued by the Revenue, following reasons were assigned for the proposed rejection of application for revocation:

“Any Supporting Document – Others (please specify) – Your reply not satisfactory. Adhaar not verified also.”

By furnishing the aforesaid reason, reply was sought from the petitioner within seven days.

8.3 It appears from perusal of show cause notice (Annexure P/5) dated 24.02.2022 that the reply dated 11.02.2022 (Annexure P/3) filed by the petitioner pursuant to first show cause notice dated 28.01.2022 (Annexure P/2) was treated as an application for revocation of cancellation of registration u/S.30.

8.4 Thereafter, the order was passed on 30.03.2022 rejecting the said application by treating the same as an application for revocation of cancellation of registration by giving following reasons:

- “1. Any Supporting Document – Others (Please specify) – Your reply not satisfactory. Adhaar not verified also.*
- 2. Firm registration canceled on the basis of physical verification report which is attached. Please see that physical report. If you are not agree with proper officer decision you have opportunity to file appeal against proper officer.”*

8.5 Pertinently, the application for revocation of cancellation of registration preferred u/S.30 was filed by the petitioner on 07.03.2022 (Annexure P/6), which appears to have not been taken into account while rejecting the claim for revocation of cancellation of registration.

8.6 Thereafter, the petitioner preferred an appeal u/S.107, which came to be dismissed by order dated 13.06.2022 (Annexure P/9)

9. After hearing learned counsel for rival parties and perusing the record, it is evident as day-light that the principle of natural justice (*audi alteram*

partem) has been given a go-bye by the Revenue at the very initial stage of issuance of show cause notice (Annexure P/2) for the reasons infra:

9.1 The power of cancelling registration stems from Section 29 where the Proper Officer is empowered to cancel registration when he finds that :

- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
- (d) any person who has taken voluntary registration under subsection (3) of section 25 has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

9.2 However, the aforesaid power of cancellation of registration is circumscribed by the first proviso, which is to the following extent:

“Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:”

10. Meaning thereby that affording of opportunity of being heard is a precondition for exercising the power of cancellation of registration. The expression “opportunity of being heard” has been explained time and again by various decisions of the Apex Court as well as this Court and other High Courts to include the following components:

- (a) furnishing of reason along with supporting material to the assessee on the basis of which the registration is proposed to be cancelled;
- (b) the grant of sufficient opportunity by way of personal appearance or otherwise as the case may be (depending upon the textual and contextual statutory provisions) to the assessee to respond in writing;
- (c) in case no material is supplied or insufficient reasons are given in the show cause notice and the assessee seeks proper reasons and material, then the Revenue is obliged to extend the time for filing reply by furnishing proper reasons and supporting material;
- (d) Revenue should also take into account certain circumstances, which may be beyond the control of assessee where extension of time ought to be given considering the seriousness and urgency of reasons assigned for extension;
- (e) the minimum period after service of a valid or proper show cause notice, for submission of reply by the assessee is prescribed as seven days, which is extendable on the discretion of the Proper Officer for justified reasons to be recorded in writing;
- (f) in case assessee within seven days or the extended time fails to file any response in writing, then the Proper Officer is free to pass appropriate order; and

- (g) in case, assessee submits reply in writing, then the same is to be considered by passing an appropriate speaking order by the competent authority u/S.30 containing sufficient reasons to enable the assessee to avail the remedy of appeal u/S.107.

10.1 Similar affording of reasonable opportunity is stipulated while deciding an application for revocation of cancellation of registration u/S.30.

11. Reverting to the facts herein, it is obvious at first glance that the show cause notice did not contain sufficient reasons to enable the assessee-petitioner to file a reply and, therefore, reasonable opportunity of being heard was denied to the petitioner. By saying that the registration has been obtained by fraud/wilful misstatement/suppression of facts, is not sufficient. Such terms need to be supported by reasons as to why, how and under what circumstances the registration was obtained by fraud/wilful misstatement/suppression of facts. More so, such reasons ought to be supported by at least some fundamental supporting material, which, in the instant case is conspicuously missing.

11.1 More so, the order of cancellation of registration is also bereft of any reason whatsoever and thus disables the petitioner-assessee from effectively availing the remedy of statutory appeal u/S.107.

11.2 Further, the show cause notice for rejection of application for revocation of cancellation of registration (Annexure P/5) refers to an application dated 11.02.2022. The application dated 11.02.2022 was, in fact, a reply to the show cause notice for cancellation of registration (Annexure P/2) and, therefore, it appears that the Revenue has not even cared to ensure

that true facts are reflected from the show cause notice (Annexure P/5). The carelessness on the part of the Revenue is palpable.

11.3 The appellate authority while passing the appellate order (Annexure P/9) dated 13.06.2022 has brushed aside the cogent ground of violation of principle of natural justice (*audi alteram partem*). Pertinently, the appellate authority conducted a physical verification of the premises of petitioner-assessee. Such physical verification at the appellate stage cannot validate the illegalities which had crept at the initial stage of show cause notice.

12. This Court profitably refers to the Division Bench decision of Delhi High Court in the case of **Balaji Enterprises** (supra) where the facts and circumstances especially the text of the show cause notice impugned therein were almost similar to the text of the impugned show cause notice herein. The relevant paras 12 to 25 of the said judgment are reproduced below for ready reference :

“12. A plain reading of the order would show, that the petitioner's registration was cancelled on account of an enquiry pending against the petitioner, which evidently is being carried out by DGGI, Chennai concerning supply of “spurious goods.”

13. Furthermore, it is also indicated, as is evident on a plain reading of the impugned order, that the premises of the petitioner were physically verified by the Range Inspector, after receiving approval from the competent authority, and that it was found that the premises had been sealed by DGGI, Chennai.

14. Interestingly, the impugned order reveals, that nothing was due from the petitioner on account of tax, interest, penalty or cess.

15. Clearly, the SCN did not advert to the facets, which were referred to in the impugned order, whereby the petitioner's registration has been cancelled.

16. Although, as per the impugned order, the Range Inspector appears to have physically verified the petitioner's premises, neither was any notice given of the physical verification, nor is the report which was generated after the verification, uploaded on the portal.

17. This was required to be done, as provided in Rule 25 of the CGST Rules.

18. We have specifically queried Mr. Aditya Singla, who appears on behalf of the respondents/revenue on this aspect of the matter.

19. Mr. Singla is not able to give a satisfactory answer, as to whether or not the verification report had been uploaded on the designated portal.

20. Ms Anjali J. Manish, who appears on behalf of the petitioner, has emphatically submitted before us, that the verification report has not been uploaded on the designated portal.

21. Apart from anything else, there is, certainly, an infraction of the provisions of Rule 25 of the CGST, and that apart, as indicated above, the impugned order has gone beyond the frame of the SCN.

22. Accordingly, the prayer made in the writ petition is allowed.

23. The impugned order is set aside.

24. The respondents/revenue will restore the registration of the petitioner. 12.1 It is made clear though, that this order will not come in the way of the respondents/revenue issuing a fresh SCN or carrying on investigation against the petitioner, albeit as per law.

25. The writ petition is disposed of in the aforesaid terms.”

13. In the conspectus of aforesaid discussion, this Court has no manner of doubt that the impugned show cause notice dated 28.01.2022 (Annexure P/2) and the consequential order of cancellation of registration dated 11.02.2022 (Annexure P/4), rejection of application for revocation of cancellation of registration dated 30.03.2022 and the appellate order dated 13.06.2022 (Annexure P/9) are vitiated in law for being vague and having been issued in violation of principles of natural justice (*audi alteram partem*).

14. Consequently, both the petitions i.e. W.P. No.21659 of 2022 and W.P. No.22416 of 2022 stand **allowed** to the following extent :

(i) As regards W.P. No.21659 of 2022, impugned order of cancellation of registration dated 11.02.2022 (Annexure P/4), the order of rejection of application for revocation of cancellation dated 30.03.2022 and appellate order dated 13.06.2022 (Annexure P/9) are quashed.

(ii) As regards W.P. No.22416 of 2022, impugned order of cancellation of registration dated 25.03.2022 (Annexure P/5) and the appellate order dated 13.06.2022 (Annexure P/9) are quashed.

(iii) The Revenue is at liberty to proceed by issuing a fresh, proper and lawful show cause notice to the petitioner-assessee, if they are so advised.

15. No order as to costs.

(SHEEL NAGU)
JUDGE

(HIRDESH)
JUDGE