IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18860 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 1169 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 2263 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 3140 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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AGGARWAL DYEING AND PRINTING WORKS
Versus
STATE OF GUJARAT & 2 other(s)

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Appearance:
NATASHA SUTARIA(7907) for the Petitioner(s) No. 1
for the Respondent(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 1,2,3

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 24/02/2022

ORAL JUDGMENT

(PER : HONOURABLE MS. JUSTICE NISHA M. THAKORE)

1. Since the issues raised in all the captioned writ applications are the same, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. For the sake of convenience, the Special Civil Application No.18860 of 2021 is treated as the lead matter.

3. By this writ-application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

> *"a. Direct Respondent no.3 to revoke cancellation of the registration of the writ applicant bearing no. 24AEXPA3306ClZZ*
>
> *b. Direct Respondent no.2 to consider the Appeal for Revocation the cancellation of Respondent dated 17.07.2021 filed by the writ applicant on merits*
>
> *c. Direct Respondent no.3 to accept and consider the Application for revocation of registration by the writ applicant within a period of 14 days from the date of application.*
>
> *d. Award costs of the writ application and orders thereon; and*
>
> *e. 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."*

4. The summary of facts of the case as pleaded by the writ applicant in the lead matter are as under :

4.1 The writ applicant is a sole proprietary concern and is engaged in the business of manufacturing of dyeing and printing fabrics. The writ applicant was a registered dealer holding GSTIN registration no. 24AEXPA3306C1ZZ, under the

provisions of the Gujarat Goods and Service Tax Act, 2017 (for short 'the Act, 2017') with effect from 04.08.2017. The copy of such registration certificate in the Form GST REG-06, dated 16.02.2018 has been placed on record. The writ applicant claims to be a regular tax payer.

4.2 On 18.09.2018, the writ applicant was served with a show cause notice issued by respondent no.3 calling upon to reply as to why the registration should not be cancelled for the reason that the writ applicant had not filed his returns for a continuous period of six months. The writ applicant was asked to furnish his reply and hearing was fixed on 27.09.2018.

4.3 The writ applicant, however, failed to submit his reply and on 30.09.2018, the Assistant Commissioner, Ghatak 21 (Ahmedabad) passed an ex-parte order of cancellation of registration with effect from it's date of registration ie. 04.08.2017.

4.4 The writ applicant claims to be lacking knowledge of the New tax regime and having learnt about the cancellation of registration, sought the advise of his Chartered Accountant and belatedly filed his returns. The writ applicant has placed on record the returns filed in FORM GSTR-3B for the period between April, 2020 and March, 2021. The writ applicant had availed the benefit of the amnesty scheme dated 28.05.2021 by making the requisite payment of an amount of Rs. 24,000/-. The writ applicant has placed on record the challan dated 29.07.2021 about deposit of such amount.

4.5 After a delay of almost more than two years, the writ applicant preferred an appeal on 17.07.2021, before the

Appellate Authority by submitting FORM GST APL-01 under Section 107 of the Act, 2017 read with Rule 108(1) of the Rules framed there under.

4.6 The writ applicant tried to offer explanation for the delay stating that because of lack of knowledge about filing of returns , more particularly, when the turnover was 'NIL', under the bonafide belief that no return is required to be tendered, the same was not submitted. The writ applicant further offered to deposit the amount of tax and penalty and to abide by the filing of return and payment of tax in future transactions.

4.7 The Appellate Authority however, vide order dated 12.10.2021, declined to exercise its discretion and thereby dismissed the appeal on the ground of delay of 2 years and 17 days.

4.8 In such circumstances, the writ applicant has approach this court, seeking reliefs as sought for.

5. Before we examine the merits of the case, we may reproduce tabular details of allied matters, as under :

Case no.	Registration no. details(dated).	Show cause notice(dated) Reasons assigned.	Order of cancellation of registration (dated). Reasons recorded in order.	Returns filed/ tax paid.	Appeal filed, if any.
SCA no. 1169 of 2020	24ANFPG0506M 1ZB Dated 30.03.2021	06.09.2021 Registration obtained by means of fraud, willfull misstatement or suppression of facts.	25.10.2021 Registration obtained by means of fraud, willfull misstatement or suppression of facts.		No Appeal.
SCA no. 2263 of 2022.	24AAUPY0725C1 ZL Dated 15.09.2018	24.05.2019 Not filed returns for continuous period of six months.	29.06.2019 Not filed returns for continuous period of six months.	Claims to have file returns manually and also	Appeal rejected vide order dated 09.07.2021, on ground of delay of 17

				paid tax. Application dated 12.09.2019 seeking revocation pending.	months.
SCA no. 3140 of 2022	24AAFFTS101Q1Z1 07.07.2018	19.06.2019 Not filing returns for continues period of six months.	27.06.2019 Sought time to file reply however, order passed without providing reasons.	Application dt. 29.06.2019, seeking revocation rejected vide order dated 03.08.2019.	Appeal filed on 19.09.2021 explaining delay on account of death of father and Covid-19 pandemic. Rejected vide order dated 07.12.2021.

6. This court while issuing notices in each of these cases had prima facie found that the show cause notice seeking cancellation of the registration issued by the respective Assistant Commissioner/Deputy Commissioner under the said Act, is devoid of any specific details/particulars. Again, pursuant to the such show cause notices what was even more glaring was to note the impugned orders of cancellation of registration. Thus, this Court passed following order :

> *"1. We have heard Ms. Prutha Bhavsar, the learned counsel appearing for the writ applicant.*
>
> *2. The subject matter of challenge in the present writ applicant is to the order passed by the respondent No.3 cancelling the registration of the writ applicant under the G.S.T. Act. Ms. Bhavsar first invited our attention to page : 19 of the paper book i.e. the show cause, which was issued to her client dated 18th September 2018. Ms. Bhavsar, thereafter, invited our attention to page : 20 of the paper book i.e. the order cancelling the registration dated 30th September 2018. In the last, she invited our attention to page : 53 of the paper book, it is an order passed by the appellate authority dismissing the appeal filed by the writ applicant on the ground that the same is time barred.*
>
> *3. We take notice of the fact that the show cause notice at page : 19 (Annexure : B) is as vague as anything. The order cancelling the registration is at page : 20 is more vague than the show cause notice.*

4. Let Notice be issued to the respondents, returnable on 16th February 2022. Direct service is permitted.

5. On the returnable date, notify this matter on top of the Board."

7. On the next date of hearing, Mr. Utkarsh Sharma, the learned Assistant Government Pleader, appeared for the respondent authorities and the matters were posted next day. When the matters were taken up for further hearing, attention of the Additional Solicitor General of India was drawn about the manner in which the cancellation of registration of certificate under the CGST/ GGST Act, 2017 are persuaded. Upon hearing the learned Counsels, this Court passed following order on 17.02.2022 :

"1. These matters have been notified today so as to understand from Mr. Devang Vyas, the learned A.S.G. assisted by Mr. Utkarsh Sharma, the learned A.G.P. as to what mechanism the department would like to evolve so as to cure the problem of issuing show cause notices containing no specific particulars and also the final orders that are being passed cancelling the registration under the GST Act. Mr. Vyas submitted that he has taken up the issue very seriously with the department and within a short period of time, this problem shall be taken care of. Mr. Vyas prays for a week time to put forward a concrete proposal, which should take care of this issue of vague show cause notice and vague final orders of cancellation of registration.

2. We have been given to understand that the portal is not permitting the concerned officer to insert the material particulars or necessary information to make any show cause notice or any final order, a speaking order or a meaningful order. If the problem is in the portal, then our suggestion is that a show cause notice as well as the final order should be passed on a paper like any other order which any authority or a Court of law passes. Such show cause notice or order should be dispatched at the correct address of the dealer concerned. If this exercise is undertaken, then no dealer will come to the Court complaining that the show cause notice as well as the final order are vague or unintelligible. Mr. Vyas further pointed out that in the portal, some arrangement has been made to indicate an attachment. So, tomorrow, if any dealer comes to know that a show cause notice has been issued or final order has been passed, there is some attachment to the same. Such attachment should go to the registered premises of the dealer in a physical form.

3. Post these matters once again on 24th February 2022. We hope that by 24th February 2022, the issue is resolved at the end of the respondents."

In light of the aforesaid facts, the controversy in all these writ application is in the narrow compass i.e. Whether the show cause notice seeking cancellation of registration and the consequential impugned order cancelling registration under the GST Act, 2017 is valid and sustainable in eye of law?

8. At this stage it would be appropriate to look into relevant legal provisions and the legal position in facts of the cases on hand.

8.1 Scheme of the Act :

The Central Goods and Services Tax Act, 2017 was promulgated and brought into force with effect from 1-7-2017, which is an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and the matters connected therewith or incidental thereto. Likewise, the Gujarat Goods and Services Tax Act, 2017 (for short, 'the GGST, 2017') was enacted and published in Gujarat Government Gazette dated 9th June, 2017, which is also an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the State of Gujarat and the matters connected therewith or incidental thereto. Thus, the resultant effect upon introduction of the CGST Act, 2017 and the GGST Act, 2017, was that the statutes which were imposing indirect taxes stood repealed and the only indirect taxes that prevailed are the Central GST and the State GST. The levy of goods and services tax on goods and services is being made by the Central Government

under the provisions as promulgated under the CGST Act, 2017 and the State Government levy goods and services tax under the provisions as promulgated under the State GST Act. The related provisions for certificate of registration and it's cancellation, under the said Act are as under :

- Section 2(107) defines the term "taxable person" means a person who is registered or liable to be registered under Section 22 or Section 24.

- Chapter VI pertains to Registration. Section 22 provides for person liable for registration. Section 23 pertains to person who shall not be liable for registration whereas section 24 provides for compulsory registration in certain cases specified therein. Section 25 provides application to be made within period of thirty days and prescribes procedure to be followed for registration. Section 26 provides deemed registration.

- The Gujarat Goods and service Rules, 2017 has come into effect from 22nd June, 2017. Chapter III deals with subject "Registration". Rule 8 provides for Application for registration. Rule 10 provides for Issue of registration certificate. Rule 16 provides for Suo Moto registration.

- Section 29 confers power upon the Proper Officer for cancellation of Registration. Section 30 provides for revocation of cancellation of registration. Against the aforesaid substantive provisions prescribed under the Act, the corresponding rules framed thereunder are also required to be looked into. Rule 20 provides for filing of application for cancellation of registration by the dealer.

> Rule 21 provides for Registration to be cancelled by the proper officer in certain cases. Rule 22 deals for procedure to be adhered while proceeding for with Cancellation of Registration. Rule 23 deals with Revocation of cancellation of registration.

9. In light of the aforesaid provisions, we notice that registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail Input tax credit for the taxes on his inward supplies. Without registration, a person can neither collect tax from his customers nor claim any input tax credit of tax paid by him. It appears that registration in GST is PAN based and State specific. Thus, supplier has to get himself register in each of such State or Union territory from where he effects supply. The Act empowers proper officer and registration granted under GST can be cancelled for specified reasons. The cancellation can either be initiated by the department on their own motion or the registered person can apply for cancellation of their registration.

9.1 From the bare reading of the rules, 2017 along with statutory provision, the reasons for cancellation can be curled out as under :

> a) a person registered under any of the existing laws, but who is not liable to be registered under the GST Act;
>
> b) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise 11 disposed of;

c) there is any change in the constitution of the business;

d) the taxable person (other than the person who has voluntarily taken registration under sub-section (3) of section 25 of the CGST Act, 2017) is no longer liable to be registered;

e) a registered person has contravened such provisions of the Act or the rules made thereunder;

f) a person paying tax under Composition levy has not furnished returns for three consecutive tax periods;

g) any registered person, other than a person paying tax under Composition levy has not furnished returns for a continuous period of six months;

h) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration;

i) registration has been obtained by means of fraud, willful misstatement or suppression of facts.

9.2 The procedure for cancellation of registration can be summarized as under:

i. A person already registered under any of the existing laws (Central excise, Service tax, VAT etc.), but who now is not liable to be registered under the GST Act has to submit an application electronically by 31st December 2017, in FORM GST REG-29 at the common portal for the cancellation of registration granted to him. The Superintendent of Central Tax Cancellation of Registration in GST 12 GST FLYERS shall, after conducting such enquiry as deemed fit, cancel the said registration.

ii. The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under Central Goods and Services Tax Act.

iii. In the event, the Superintendent of Central Tax has reasons to believe that the registration of a person is liable to be cancelled, a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled; will be issued.

iv. The reply to the show cause notice issued has to be furnished by the registered person in FORM REG– 18 within a period of seven working days.

iv. In case the reply to the show cause notice is found to be satisfactory, the Superintendent of Central Tax will drop the proceedings and pass an order in FORM GST REG –20.

v. However, when the person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the Superintendent of Central Tax will issue an order in FORM GST REG-19, within a period of thirty days from the date of application or, as the case may be, the date of the reply to the show cause issued, cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty.

vi. The registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher.

vii. In case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

viii. The cancellation of registration shall not affect the liability of the person to pay tax and other dues for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

9.3 At the same time, the statute also provides for revocation of cancellation:

i. When the registration has been cancelled by the Proper Officer (Superintendent of Central Tax) on his own motion and not on the basis of an application ,then the registered person, whose registration has been cancelled, can submit an application for revocation of cancellation of registration, in FORM GST REG-21, to the Proper Officer (Assistant or Deputy Commissioners of Central Tax), within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

ii. However, if the registration has been cancelled for failure to furnish returns, application for revocation shall be filed, only after such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.

iii. On examination of the application if the Proper Officer (Assistant or Deputy Commissioners of Central Tax) is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, then he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant.

iv. However, if on examination of the application for revocation, if the Proper Officer (Assistant or Deputy Commissioners of Central Tax) is not satisfied then he will issue a notice in FORM GST REG–23 requiring the applicant to show cause as to why the application submitted for revocation should not be rejected and the applicant has to furnish the reply within a period of seven

working days from the date of the service of the notice in FORM GST REG24.

v. Upon receipt of the information or clarification in FORM GST REG-24, the Proper Officer (Assistant or Deputy Commissioners of Central Tax) shall dispose of the application within a period of thirty days from the date of the receipt of such information or clarification from the applicant. In case the information or clarification provided is satisfactory, the Proper Officer (Assistant or Deputy Commissioners of Central Tax) shall dispose the application as per para (iii) above. In case it is not satisfactory the applicant- Cancellation of Registration in GST 16 GST FLYERS will be mandatorily given an opportunity of being heard, after which the Proper Officer (Assistant or Deputy Commissioners of Central Tax) after recording the reasons in writing may by an order in FORM GST REG- 05, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

vi. The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under Central Goods and Services Tax Act.

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 45. 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 Grouop Housing Society Limited*, (2010) 13 SCC 336; *Kranti Associates Private Limited v. Masood Ahmed Khan,* (2010) 9 SCC 496; *Abdul Ghaffar v. 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 v. Masood Ahmed Khan,*** (2010) 9 SCC 496, 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 (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737);.

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 of 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 decision."*

> *o. In all common law jurisdictions judgments 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 reason 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 Andha Pradesh High Court in the case of ***MRF Mazdoor Sangh vs. The Commissioner of Labour & Others***, reported in ***2014 (3) ALT 265***, MANU/AP/1685/2013, 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."*

12.1 We find that the aforesaid observation would squarely apply to the present facts of the case on hand. Thus, the sum and substance of various judgments on the principles of natural justice is to the effect that wherever an order is likely to result in civil consequences, though the statute or provision of law, by itself, does not provide for an opportunity of hearing, the requirement of opportunity of hearing has to be read into the provision.

13. It cannot be disputed that the writ applicant is liable to

both civil and penal consequences pursuant to the impugned order of cancellation of certificate of registration. In all the writ applications we could note from the tabular details that the show cause notice though issued in the prescribed form does not elaborate the reasons and the one line reason mentioned is nothing but the reproduction of either of the reasons provide under rules regarding cancellation of registration. It appears from the materials on record that the respondent no.2 issued a show-cause notice dated 18th September, 2018 in the Form GST REG-17, calling upon the writ-applicant to show-cause as to why the registration under the GST should not be cancelled. Such notice issued by the respondent no.2 is under Rule 22(1) of the Central Goods and Services Tax Rules, 2017. The notice dated 18th September, 2018 referred to above reads as under :

"Form GST REG-17

[See Rule 22(1)]

Reference Number : ZA240918027128D

Date : 18/09/2018

To

Registration no. (GSTIN/Unique ID) : 24AEXPA3306
SANJEEV PREM AGGARWAL
SURVEY NO.230, OPP. MARIYA BANK, B/H RANIPUR VILLAGE,NAROL,
Ahmedabad, Gujarat 382405.

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. Any Tax payer other than composite taxpayer has not filed returns for a continuous period of six months.

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 27/09/2018 at 12:42.

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 *Signature valid digitally signed by OS Goods and Service Tax Network 1.*
Date: 2018.09.18 13.00.44"

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.

14. We further notice that the respondent authority has failed to extend sufficient opportunity of hearing before passing impugned order, inspite of specific request for adjournment sought for. Even the impugned order is not only non speaking, but cryptic in nature and the reason of cancellation not decipherable therefrom. Thus, on all counts the respondent authority has failed to adhered to the aforesaid legal position. We therefore, have no hesitation in holding that the basic Principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences.

15. We would be failing in our duty if we do not draw the attention of the Appellate Authority who has mechanically disposed off the appeals on the ground of delay. Apt would be to revisit the observations of the Supreme Court with regard to reasonable opportunity in the case of ***Union of India vs. Jesus Sales Corporation***, reported in ***1996 (4)SCC 69,*** wherein it is observed that a practice has developed holding that even in the absence of a provision providing for an opportunity of

hearing, such a provision is required to be read into the Rules governing the case, particularly, when an order being made is likely to have civil consequences. The Hon'ble Supreme Court has emphasize up on the appellate court to have the approach tilting in favour of providing fair and reasonable opportunity of hearing while dealing with condonation of delay application in filing appeal. The relevant observation made by the Hon'ble Supreme Court in the case of ***Jesus Sales Corporation (supra***) in para 2, are as under :

> *"The Appellate authority may dispense with such deposit in its discretion. The proviso relating to the condonation for delay in filing the appeal is more or less on the pattern of Section 5 of the Limitation Act. Some how, a practice has grown throughout the country that before rejecting the prayer for condonation of delay in filing the appeal or application, opportunities are given to the appellants or petitioners, as the case may be, to be heard on the question whether such delay be condoned. Opportunities to be heard are also the contesting respondents in such appeals. In different statutes given to where power has been vested in the Appellate authority to condone the delay in filing such appeals or applications, there are no specific provisions in those statutes saying that before such delays are condoned the appellants or the applicants shall be heard, but on basis of practice which has grown during the years the courts and quasi-judicial authorities have been hearing the appellants and applicants before dismissing such appeals or applications as barred by limitations. It can be said that courts have read the requirements of hearing the appellants or the applicants before dismissing their appeals or applications filed beyond time on principle of natural justice, although the concerned statute does not prescribe such requirement specifically."*

15.1 The Appellate authority ought to have appreciated that the writ applicants at relevant point of time i.e. in year 2017, applied for registration which request was favourably considered by the authorities under the Act with a specific registration number allotted to the writ applicant. It was a transitional phase, whereby the old CST Act was repealed and the new regime of CGST/ GGST has come into force. With the different forms and procedure envisaged there under, any

layman is bound to take time to adhered to the norms. The Record reveals that subsequently the writ applicants have claim to have filed their returns and have even deposited all dues. We further notice that such exercise has been undertaken through the writ applicant's Tax Consultant who were professionally engaged to undertake such task. Unfortunately, information of the returns for certain period not being uploaded, surfaced in the year 2019 and the cause explained suggest that circumstances were beyond the writ applicant's reach. In such peculiar circumstances, it was least expected of the Appellate authority to condone the delay for filing appeal, more so, with the Onset of Pandemic Covid-19, preventing further follow up action. In the peculiar facts and circumstances, the authority ought to have condoned the delay which unfortunately was not done, despite the writ applicant having made a fervent request for condonation of delay in filing appeal seeking revocation of cancellation of registration.

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.

17. We direct that till the technical glitches are not cured, the department will henceforth issue show cause notice in a physical form containing all the material particulars and information therein to enable the dealer to effectively respond to the same. Such show cause notice in physical form shall be dispatched to the dealer by the RPAD. In the same manner, the final order shall also be passed in physical form containing all necessary reasons and the same shall be forwarded/communicated to the dealer by way of RPAD. Any lapse in this regard, henceforth shall be viewed very strictly. We are saying so because this Court has been fedded up with unnecessary litigation in this regard.

18. Our final conclusion are as under:

18.1. Until the Department is able to develop and upload an appropriate software in the portal which would enable the Department to feed all the necessary information and material particulars in the show cause notice as well as in the final order of cancellation of registration that may be passed, the authority concerned shall issue an appropriate show cause notice containing all the necessary details and information in a physical form and forward the same to the dealer by RPAD. In the same manner, when it comes to passing the final order, the same shall also be passed in a physical form containing all the necessary information and particulars and shall be forwarded to the dealer by RPAD.

18.2 Over a period of time, we have noticed in many matters

that the impugned order cancelling the registration of a dealer travels beyond the scope of the show cause notice. Many times, the dealer is taken by surprise when he gets to read in the order that the authority has relied upon some inspection report or spot visit report etc. If the authority wants to rely upon any particular piece of evidence then it owes a duty to first bring it to the notice of the dealer so that if the dealer has anything to say in that regard, he may do so. Even if the authority wants to rely on any documentary evidence, the dealer should be first put to the notice of such documentary evidence and only thereafter, it may be looked into.

18.3 The aforesaid may appear to be very trivial issues but, it assumes importance in reducing the unnecessary litigation. Our concern is that on account of procedural lapses, the High Court should not be flooded with writ applications. The procedural aspects should be looked into by the authority concerned very scrupulously and deligently. Why unnecessarily give any dealer a chance to make a complaint before this Court when it could have been easily avoided by the department.

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.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

(PER : HONOURABLE MR. JUSTICE J.B. PARDIWALA)

1. My Esteemed Sister, Nisha Thakore, J. has just delivered a very important order as the directions contained therein will go a long way in reducing the hardships and difficulties being caused to the dealers on account of the technical bottlenecks or glitches in the GSTN Portal.

2. India is at the forefront so far as the Information Technology Supremacy is concerned. The GSTN i.e. the Goods and Service Tax Network, is one of the most significant achievements in the history of Indian Indirect Taxation. Since July, 2017, the implementation of GST in India is due to the GSTN. However, still there are many issues which the GSTN need to address itself. There is always a scope of improvement in the functioning and technical performance of the GSTN. Due compliance of the laws of GST involves lot of technology and not just the law. Using the right technology for the right process in an efficient manner will definitely reduce the hardships and difficulties, which the small dealers may have to

face. It is extremely important as on date to ensure that the technical glitches or bottlenecks in the portal are attended at the earliest and taken care off.

(J. B. PARDIWALA, J)

NEHA