

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 8990 of 2023**

=====

OM TRADING
Versus
STATE OF GUJARAT

=====

Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2

MR.PRANAV TRIVEDI AGP NOTICE SERVED BY DS for the Respondent(s)
No. 1,2

=====

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 21/06/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

[1] This petition is filed under Article 226 of the Constitution of India, in which, the petitioners have prayed that the order dated 13.12.2021 passed by the respondent authority as well as the impugned Show-cause notice dated 24.11.2021 issued by the respondent authority may be quashed and set aside.

[2] Looking to the issues involved in the present petition, learned advocates appearing for the parties have jointly requested that this petition may be taken up for

final disposal at the admission stage.

[3] Hence, Rule. Learned AGP Mr.Pranav Trivedi waives service of notice of rule for and on behalf of qua respondents.

[4] Heard Mr.Uchit Sheth learned advocate for the petitioners and Mr.Pranav Trivedi, learned Assistant Government Pleader for the respondents.

[5] Learned advocate appearing for the petitioners submitted that the petitioners are engaged in the business of trading in base oil and they are duly registered under the Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act') and registration certificate has been issued by the respondent authority to the petitioner.

5.1 It is submitted that the petitioners purchased and sold goods in the usual course of business and the transactions were reflected in the returns. At this stage, it is pointed out that respondent no.2 - authority uploaded Show-cause notice dated 24.11.2021 on the GST portal proposing to cancel their registration certificate

under the Act by simply stating that the registration was obtained by means of fraud, willful misstatement or suppression of facts. Learned advocate for the petitioners has referred copy of the said Show-cause notice which is placed on record at page no.24 of the compilation.

5.2 It is submitted that the petitioners were not logging on GST portal and therefore, they were not aware about the issuance of the said notice, even, petitioners did not receive any documents in support of the said notice. It is also grievance of the petitioners that the respondent no.2 - authority passed the impugned order dated 13.12.2021, by which, the registration of the petitioners has been canceled. Therefore, the petitioners have preferred the present petition.

[6] Learned advocate for the petitioners would mainly submit that the issues involved in the present petition is covered by the decision of this Court rendered in 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 matters.

6.1 At this stage, it is further submitted that this Court has recently passed the order on 15.06.2023 in the case of **Sona Metals vs. State of Gujarat in Special Civil Application No.25221 of 2022** and once again, relying upon the aforesaid decision rendered in the case of **Aggrawal Dyeing (supra)** submitted that this Court has quashed and set aside the Show-cause notice issued by the concerned respondent. Therefore, he urges before this Court to allow the present petition.

[7] On the other hand, Mr.Pranav Trivedi, learned AGP for the respondents though tried to oppose this petition, fairly submitted that on the basis of written communication, no speaking order was passed at the time of cancellation of registration. Therefore, if the order passed by the authority is quashed and if authority is permitted to start fresh proceedings in accordance with law, then the said officer has no objection. Such instruction is given by the In-charge Assistant Commissioner of State Tax Unit-92, Rajkot.

[8] We have considered the submissions canvassed by the learned advocates for the parties and also perused the materials placed on record.

[9] In the present case, the respondent authority issued Show-cause notice for cancellation of registration dated 24.11.2021 which reads as under:-

“Form GST REG-17 /31
[See Rule 22(1)/sub-rule (2A) of rule 21A]

Reference Number:ZA241121083842T

Date :24/11/2021

To

Registration Number (GSTIN/Unique ID):24CEOPP4487C1Z7

Hitendrabhai Batukbhai Pathak

Survey No.171 and 172, Plot No.31

Padavala, Ta.- Kotda Sangani,

Dist.-Rajkot,

Rajkot, Gujarat,360024.

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.

Please note that your registration stands suspended with effect from 24/11/2021.

Place : Gujarat

Date : 24/11/2021

Signature Not Verified

Digitally signed by

DS GOODS AND SERVICES

TAX NETWORK (4)

Date: 2021.11.24, 17:45:28 IST

[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 STADIUM,
STADIUM 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] Even otherwise, in the present case, the respondent authority has not disputed the fact that while issuing Show-cause notice for cancellation of Registration, necessary documents were not supplied and the notice is cryptic. Therefore, it was not possible for the petitioners to give reply to the said Show-cause notice. It is not in

dispute 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 a speaking order.

[12] In the aforesaid facts and circumstances of the present case, we are of the view that both Show-cause notice dated 24.11.2021 as well as the order dated 13.12.2021 deserve to be quashed and set aside.

[13] Accordingly, the present petition is **allowed**. The Show-cause notice dated **24.11.2021** as well as the order dated **13.12.2021**, are hereby quashed and set aside. However, liberty is granted to the respondent authorities to issue fresh notice with particulars of reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the petitioners and to pass an appropriate order in accordance with law.

13.1 The concerned respondent is hereby directed to restore the registration of the petitioners forthwith.

13.2 It is needless to mention that it shall be open for the petitioners to respond to such notice by filing objection/reply with necessary documents, if relied upon.

13.3 It is clarified that this Court has not examined the merits of the case of the parties.

13.4 Rule is made absolute to the aforesaid extent.

(VIPUL M. PANCHOLI, J)

(D. M. DESAI,J)

MANOJ