AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.112 of 2013

M/s Mini Infotech, Through its Proprietor Alok Kushwaha, S/o V.S. Thakur, Aged about 42 years, R/o 1408, Block A, Shanti Residency, Pachpedi Naka, Police Station Tikrapara, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, Finance and Planning Department (Commercial Tax Department), Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)

2. Commissioner, Commercial Tax Department, Government of Chhattisgarh (Vanijya Kar Bhavan), South Civil Lines, Raipur (C.G.)

3. Divisional Deputy Commissioner, Commercial Tax Department, Government of Chhattisgarh (Vanijya Kar Bhavan), South Civil Lines, Raipur (C.G.)

4. Assistant Commissioner, Commercial Tax Department, Government of Chhattisgarh (Vanijya Kar Bhavan), South Civil Lines, Raipur (C.G.)

---- Respondents

AND

Writ Petition (T) No.113 of 2013

M/s Global Network Solutions, Through its Proprietor Anju Kushwaha, W/o Shri Alok Kushwaha, Aged about 38 years, R/o 1408, Block A, Shanti Residency, Pachpedi Naka, Police Station Tikrapara, Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through its Secretary, Finance and Planning Department (Commercial Tax Department), Mantralaya, Mahanadi Bhawan, Naya Raipur (C.G.)

2. Commissioner, Commercial Tax Department, Government of Chhattisgarh (Vanijya Kar Bhavan), South Civil Lines, Raipur (C.G.)

3. Divisional Deputy Commissioner, Commercial Tax Department, Government of Chhattisgarh (Vanijya Kar Bhavan), South Civil Lines, Raipur (C.G.)

4. Assistant Commissioner, Commercial Tax Department,

Government of Chhattisgarh (Vanijya Kar Bhavan), South Civil Lines, Raipur (C.G.)

---- Respondents

For Petitioners:	Mr. Anumeh Shrivastava, Advocate.
For Respondents/State:	Mr. Gary Mukhopadhyay, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/04/2018

1. Since common question fact and law is involved in both the writ petitions, they are being disposed of by this common order.

   (The facts as laid down in W.P.(T)No.112/2013 are being taken-up and noticed for just decision of the lis between the parties.)

2. The petitioners were granted the certificate of registration under the provisions of the Chhattisgarh Value Added Tax Act, 2005 (for short, 'the VAT Act'). They were served with show cause notice under Section 16(10)(e) of the VAT Act as to why the certificate of registration be not cancelled, and directed the petitioners to appear on 8-8-2013. On that day, the petitioners sought extension of time for making representation / reply which was rejected and the empowered authority cancelled the registration certificate which was taken-up in revision but that remained unsuccessful leading to filing of these writ petitions questioning that order.

3. Mr. Anumeh Shrivastava, learned counsel appearing for the petitioners, would submit that the proviso to clause (e) of sub-section (10) of Section 16 of the VAT Act clearly obliges the Commissioner to provide an opportunity of being heard before cancelling the registration certificate, that was not provided and one

day time was granted to the petitioner in W.P.(T)No.112/2013, whereas three days' time was granted to the petitioner in W.P.(T) No.113/2013, to file reply and even extension of time was not allowed. Cancellation of registration certificate of the petitioners ensuing civil consequences has been passed which is absolutely illegal and without authority of law.

4. On the other hand, learned State counsel would support the impugned order.

5. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

6. It would be appropriate to notice the relevant provision regarding cancellation of registration certificate. Clause (e) of sub-section (10) of Section 16 of the VAT Act states as follows: -

> "**Section 16 : Registration of dealers**
>
> (10) When,
>
> (e) the commissioner for reasons to be recorded in writing, is of the opinion that the registration certificate should be cancelled for any other reason;
>
> the commissioner may either on his own motion or on the application of the dealer in this behalf cancel the registration certificate but notwithstanding such cancellation the dealer shall be liable to pay tax for the period during which his registration certificate remained in force :
>
> Provided that where the commissioner proposes to cancel the registration certificate under this sub-section, he shall give the dealer an opportunity of being heard."

7. The aforesaid provision would show that the Commissioner either on his own motion or on the application of the dealer, if he is of the opinion that the registration certificate should be cancelled for any

other reason, may cancel the registration certificate for reasons to be recorded in writing, but he is obliged to grant an opportunity of being heard to the dealer.

8. In the instant case, in W.P.(T)No.112/2013 only one day time was granted to the petitioner to file reply, whereas in W.P.(T) No.113/2013, only three days' time was granted to file reply and the application for extension of time was rejected.

9. In the matter of **Canara Bank and others v. Debasis Das and others**[1], the Supreme Court has held that the rule of audi alteram partem emphasizes the rule of fair play and must precede the adverse order. It has also been held that the notice to show cause should be clear and precise so as to apprise the party determinatively of the case and time given for the purpose should be adequate. Their Lordships observed as under: -

> "15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first

1 (2003) 4 SCC 557

statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works*[2] the principle was thus stated: (ER p. 420)

> "[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?' "

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

10. Further, the Supreme Court in the matter of **<u>Oryx Fisheries Private Limited v. Union of India and others</u>**[3] held as under: -

> "31. It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence."

11. Going by the principles of law laid down by Their Lordships in **<u>Canara Bank</u>** (supra), it is quite vivid that time given for the

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2 (1863) 143 ER 414 : 14 CBNS 180 : (1861-73) All ER Rep Ext 1554
3 (2010) 13 SCC 427

purpose would be adequate so as to enable the noticee to make his submission. It has also been held by the Supreme Court that in the absence of a notice of the kind and such reasonable opportunity, the order becomes wholly vitiated. In the instant case, in W.P.(T)No.112/2013, one day time was granted to file reply and in W.P.(T)No.113/2013, three days' time was granted, even extension of time was rejected fully on untenable ground. Cancellation of registration certificate has civil consequences because of which the dealer is deprived of his opportunity to run the business and, therefore, reasonable time ought to have been granted to enable the dealer to represent his case particularly when application in writing was made to extend the time rightly to make representation to defend himself. The learned revisional authority also failed to notice the illegality committed by the original authority and did not advert to the said fact and straightway affirmed the order of the learned Assistant Commissioner which cannot be sustained.

12. As a fallout and consequence of the aforesaid discussion, the order passed by the competent authority as well as the revisional authority, both, are hereby quashed. The matter is remitted to the competent authority / respondent No.4 for hearing and disposal in accordance with law after affording opportunity of being heard.

13. The writ petitions are allowed to the extent outlined herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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