

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2534 OF 2023

Nirakar Ramchandra Pradhan

.. Petitioner

Versus

Union of India & Ors.

.. Respondents

Mr.Roshil Nichani i/by Mr.Nikhil Rungta for the Petitioner.

Mr.Subir Kumar a/w Mr.Sruti Kalyanikar with Mr.Janhavi Hirlekar and
Mr.Salet Ketkar for the Respondents.

**CORAM : G.S. KULKARNI &
JITENDRA JAIN, JJ.**

DATE : 11th September 2023

ORAL ORDER (Per G. S. Kulkarni, J.):

1. By this petition under Article 226 of the Constitution of India, the petitioner has firstly challenged the show cause notice dated 27th July 2022 issued by the respondents calling upon the petitioner to show cause as to why the registration of the petitioner under the Central Goods and Service Tax Act, 2017 (for short 'CGST Act) should not be cancelled. The said show cause notice also records that the registration of the petitioner stands suspended w.e.f. 27th July 2022. There is no dispute on the petitioner having received the show cause notice on the even day.

2. The show cause notice was replied by the petitioner on 31st July 2022. In his reply, the petitioner interalia raised a contention that the

show cause notice does not furnish any reason whatsoever and more particularly when serious allegation of a fraud, willful misstatement or suppression of facts was being made against the petitioner. On such show cause notice, it appears that the Designated Officer / Superintendent proceeded to pass the impugned order dated 11th November 2022, by which the registration of the petitioner has been cancelled which is the second challenge as mounted by the petitioner.

3. The contention of the petitioner is that the impugned order does not furnish any reason whatsoever to cancel the registration of the petitioner and more particularly when the registration stands cancelled retrospectively with effect from 26th November 2022. On the above backdrop the present petition has been filed praying for the following reliefs: -

- “(a) that this Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records pertaining to the petitioner’s case and after going into the validity and legality thereof, be pleased to quash and set aside the impugned notice dated 27th July 2022 and impugned order dated 11th November 2022;*
- (b) that this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondents to revoke the cancellation of the Petitioner’s GST registration and restore the same with immediate effect;*

(c) *that pending the hearing and final disposal of the petition, this Hon'ble Court may be pleased to :*

- i. *injunct and/or prohibit the Respondents, its respective servants, officers and/or agents from, in any manner (directly and/or indirectly), proceeding, continuing with, completing or acting in furtherance of the impugned order ;*
- ii. *direct the Respondents to revoke the suspension of the Petitioner's GST registration immediately and restore the same."*

4. Learned counsel for the petitioner in assailing the impugned order has made two primary submissions. The first submission is that the show cause notice itself did not furnish any reason in regard to any fraud, wilful misstatement or suppression of facts for cancellation of registration under the CGST Act. It is submitted that in the reply, the petitioner had placed the position in law before the designated officer also by citing several decisions relevant in the context to contend, that the petitioner would be unable to reply to show cause notice as no reasons were furnished to be dealt by the petitioner in responding such show cause notice being bad and illegal. The second submission is to the effect that although such specific plea was taken by the petitioner, the Superintendent, Mr.Bhanwar Singh Meena proceeded to pass the impugned order cancelling the registration and that too without recording any reason. It is further submitted that no opportunity of a hearing was provided to the petitioner before passing of the impugned order. It is

hence submitted that the impugned order is passed in patent breach of principles of natural justice, as also, shows gross non application of mind on the part of the said designated officer / Superintendent in passing the impugned order. Learned Counsel for the petitioner has also drawn our attention to the reply affidavit filed by the respondents which refers to the verification report received by the respondents in regard to several transactions which has been set out in paragraphs 9 to 11 of the reply affidavit. It is submitted that the Respondent-revenue is justifying the impugned order by furnishing reasons for the first time, in the reply affidavit as such materials did not form part of the show cause notice. It is thus submitted that the impugned order on such count is itself *ex facie* illegal as in law the impugned order cannot be justified by furnishing reasons in the reply affidavit and that too for the first time in the present proceedings. It is hence submitted that the impugned order be quashed and set aside.

5. On the other hand, Mr.Subir Kumar, learned counsel for the respondents has sought to justify the show cause notice as also the impugned order passed thereon. He has placed reliance on the reply affidavit filed by Mr.Neeraj Kansal, Assistant Commissioner Anti Evasion, CGST & C.Excise, Raigad Commissionerate. He submits that in

the reply affidavit, the deponent has set out the details of the information which was revealed in the investigation in regard to fake Input Tax Credit (ITC). Referring to the reply affidavit it is submitted that the petitioner had fraudulently availed fake ITC of over Rs.13.96 crores from M/s.Sunshine Traders whose registration was cancelled and which entity seemed to have been created for supplying fake ITC to other entities in the cartel, and for mutual benefit. It is therefore submitted that the discretionary relief ought not to be granted in favour of the petitioner because of misconduct of the petitioner as set out in the reply affidavit.

6. We have heard learned Counsel for the parties. We have also perused the record.

7. At the outset, we may observe that there appears to be much substance in the submissions as urged on behalf of the petitioner, that the show cause notice dated 27th July 2022 issued to the petitioner itself was defective, inasmuch as, there was no material whatsoever referred in the show cause notice as to why the petitioner was being labelled of having obtained registration by means of fraud, wilful misstatement or suppression of facts. In our opinion, if the designated officer was to proceed against the petitioner on such material, details in that regard

ought to have been furnished to the petitioner so as to invite the petitioner's reply on such serious allegation of fraud being committed by the petitioner. The petitioner certainly was kept in total darkness on the allegations which were sought to be raised against him so as to meet a case being put up by the department and which was in fact was not informed to the petitioner and / or concealed from the petitioner. In these circumstances, there was no question of the petitioner making any effective reply to the show cause notice dated 27th July 2022. Further such basic and inherent defect in the show cause notice was also brought to the notice of the department and was informed by the petitioner to the designated officer, however, it was of no avail as no steps were taken to remove such defect / illegality, in the show cause notice. The impugned order dated 11th November 2022 cancelling the registration of the petitioner further compounds the illegality as the impugned order also does not furnish any reason whatsoever in cancelling the registration of the petitioner.

8. Thus, in our clear opinion, the impugned order is required to be held to be illegal not only on the ground of the same being in breach of the principles of natural justice but also on the ground of total non application of mind, as the same is bereft of any reasons whatsoever

which the law would recognize to justify cancellation of the registration of the petitioner. The impugned order is being passed mechanically and without application of mind is clearly seen on a bare reading of the impugned order which reads thus : -

Order for Cancellation of Registration

“This has reference to your reply dated 31/07/2022 in response to the notice to show cause dated 27/07/2022.

Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s).

1. In terms of Section 29 (3) & (4) of the CGST Act, 2017, the cancellation of registration shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder 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.

The effective date of cancellation of your registration is 26/11/2020.

Determination of amount payable pursuant to cancellation :

Accordingly, the amount payable by you and the computation and basis thereof is as follows:-

The amounts determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amounts on or before failing which the amount will be recovered in

accordance with the provisions of the Act and rules made thereunder.”

9. For the aforesaid reasons, the impugned order is required to be held to be illegal and a total nullity. It is well settled principles of law that cancellation of registration certainly meets the assessee with a civil consequence. The petitioner's registration could not have been cancelled without any reason, as no reasons were neither set out in the show cause notice nor set out in the impugned order. The show cause notice and the impugned order suffered from an incurable defect which compels us to exercise the discretionary jurisdiction under Article 226 of the Constitution of India to quash and set aside the show cause notice as also the impugned order based on such illegal show cause notice.

10. We are quite surprised to note that the reply affidavit has furnished several reasons to the effect that the petitioner is a part of cartel generating fake ITC and in utilization of the said credit. Moreover, the figures pointed out in reply affidavit are quite alarming. If according to the department, the petitioner had committed so many illegalities, it was more a reason for the department to set out and confront the petitioner with such material in the show cause notice. Thus, in these circumstances, as to why a proper show cause notice was not and an endeavour to pass a

proper order in the manner as permissible in law was not adopted, are issues which require deeper introspection by those who are incharge of the department.

11. Before parting, we need to make some observations. We may note that the case of the department is that there is substantial revenue involved in the present case which may be deprived to the public exchequer and by conduct which is also attributable to the petitioner. According to the respondents, there was a *modus operandi* on the part of the petitioner to generate and claim fake ITC. If what is stated on behalf of the revenue is to be believed to be correct, in such event, the designated officer should have been more careful and could not have been so careless in issuing such defective show cause notice. The impugned action in issuing such show cause notice and passing of the impugned order thereon, has in fact proved counter-productive to the interest of revenue, if the department is correct in its case as put up in the reply affidavit for the first time. The concerned Commissionerate needs to take a serious view of such approach of the concerned Officers who are not following the law in issuing appropriate show cause notices more particularly when the issues are serious. Such deviation by the concerned officers from deviating from following the well settled norms and

procedure, in fact would benefit an assessee if there is material that he has committed illegalities.

12. In the present case, the manner in which the show cause notice is issued and the impugned order is passed, would only assist the petitioner as it appears that the respondents had materials which could have formed the basis of the show cause notice, but the same was not informed to the petitioner and / or no attempt was made to remove the defect in the show cause notice, for reasons best known to the designated officer.

13. In our opinion, if what has been pointed out to us in the reply affidavit is proved to be correct, then in that event, such enormous time and resources being wasted by the designated officer in issuing a defective show cause notice and in passing an order mechanically by adjudicating the show cause notice could have been availed by resorting to a lawful procedure. This has certainly weighed contrary to the interest of the revenue and has enured only for the benefit of the assessee. We are hopeful that the concerned Commissionerate would take note of such issues seriously and whenever such defective adjudication is sought to be made, the same must be identified and appropriate approach be adopted, if the orders are found to be defective.

14. Also a question arises as to whether any accountability can be fixed on such officer, who had firstly issued a defective show cause notice without setting out reasons and further to make a farce of passing an order on such defective show cause notice, which is rendered patently illegal on the face of the record. We are of the clear opinion that the show cause notice cannot be an empty formality. These are serious issues which are to be noticed at the highest level in the department. We direct the respondents at the appropriate level of the Customs to consider the issues as highlighted by us, and a report be placed on record of the present proceedings, setting out the precautions to identify such cases of faulty adjudication of show cause notices, and the actions which can be taken on such issues. This be done within a period of four weeks from today.

15. For the aforesaid reasons, we dispose of this petition in terms of the following directions :-

- (i) The impugned show cause notice dated 27th July 2022 is quashed and set aside. The consequential order dated 11th November 2022 cancelling the petitioner's registration is also quashed and set aside.
- (ii) The respondents are at liberty to initiate fresh proceedings against the petitioner with a direction to the appropriate authority that in the event a fresh show cause notice is issued to the petitioner, it should be in accordance with law, setting out appropriate reasons. Such show cause notice be adjudicated in accordance with law after

granting an opportunity to the petitioner, to place on record all his contentions, and after granting personal hearing to the petitioner. Such show cause notice be adjudicated as expeditiously as possible preferably within four weeks from the date of filing of the reply by the petitioner.

- (iii) All contentions of the parties in that regard are expressly kept open.
- (iv) We also clarify that we have not precluded the respondents from exercising any other powers as may be available to the respondents in law as the facts and circumstances may warrant. Our observations are confined only to the show cause notice in question and the impugned order.
- (v) Needless to observe that setting aside the impugned order would result the status of registration of the petitioner being restored. It is however clarified that this would not preclude the revenue from issuing any fresh order to suspend the registration as may be permissible in law.
- (vi) Disposed of in the aforesaid terms. No costs.

JITENDRA JAIN, J.

G.S. KULKARNI, J.