IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33519 of 2024 and
W.M.P.Nos.36297 and 36299 of 2024

Tvl.DNC Infrastructure Private Limited,
(Represented by its Managing Director
Mr.Dirishala Naresh Chowdary),
No.40/44 – B, Iqrah Enclave,
Kolathur Main Road,
Chennai, Tamil Nadu 600 099. ... Petitioner

Vs.

The Superintendent,
Range -I, Goods and Service Tax,
Thiru Vi Ka Nagar Division,
Chennai North Commissionerate,
Chennai Zone, Chennai. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records on the files of the Respondent in his proceeding in FORM GST REG - 19 with Reference No. ZA330724080319F dated 16.07.2024 and quash the same.

For Petitioner : Mr.K.A.Parthasarathy

For Respondent : Mr.Sai Srujan Tayi,
Senior Standing Counsel.

ORDER

The writ petition is filed challenging the impugned order dated 16.07.2024 on the premise that the same was passed without granting a personal hearing which according to the petitioner is mandatory in terms of the first proviso to Section 29(2) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") read with 75(4) of the CGST Act. The relevant provisions are extracted hereunder:

"Section 29(2) of the GST Act:

29. Cancellation 1 [or suspension] of registration:

....

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—

....

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

Section 75(4) of the GST Act:

75. General provisions relating to determination of tax.

....

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

A reading of the above provision would show that before an order of cancellation of the registration certificate is made, it is mandatory that a personal hearing must be granted. A perusal of the records would reveal that no personal hearing was granted though the petitioner had submitted its reply dated 15.07.2024. For the purpose of disposing of the present writ petition, it may not be relevant to deal in detail with the fact that the petitioner's registration certificate was earlier cancelled and on a revocation application, the same was restored, in view of the fact that the impugned order has been passed without granting a personal hearing, which is mandatory.

2. It is submitted by the learned counsel for the petitioner that in the absence of personal hearing, the impugned order stands vitiated. The learned counsel for the petitioner would also submit that entire proceedings commencing with show cause notice suffers from the vice of not setting out the necessary details which is essential for them to respond. It may be relevant to note that the Hon'ble Supreme Court in the case of *Oryx Fisheries (P) Ltd. v. Union of India* reported in *(2010) 13 SCC 427*, after referring to the case of *Kranti Associates (P) Ltd. Masood Ahmed Khan* reported in *(2010) 9 SCC (Civ) 852*, formulated the following principles on the relevance of reason:

"39. *On the requirement of disclosing reasons by a quasi-judicial authority in support of its order, this Court has recently delivered a judgment in Kranti Associates (P) Ltd. v. Masood Ahmed Khan.*

40. *In Kranti Associates this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment 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 lifeblood 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.

(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, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(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".

3. The learned counsel for the respondent would submit that this is an appealable order and therefore, the writ petition ought not to be entertained under Article 226 of the Constitution of India.

4. This Court is conscious of the fact that writ petitions under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is availed. However, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India.

5. Considering the submissions made on both sides, this Court is of the view that failure to grant a personal hearing is contrary to the mandate contained under Section 75(4) of the GST Act and also results in gross violation of principles of natural justice. Thus the impugned order dated 16.07.2024 is set aside. It is open to the respondent to issue a notice containing the reason for initiating the impugned proceeding and shall also afford a personal hearing and thereafter pass a speaking order under Section 29 of the Act. If any such notice granting personal hearing is issued the petitioner would

appear for personal hearing on the date so fixed. In the event of failure to appear for personal hearing, the impugned order shall stand restored.

6. Accordingly, the writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.11.2024

Neutral Citation : Yes / No
Index : Yes / No
Internet : Yes
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MOHAMMED SHAFFIQ, J.

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To

The Superintendent,
Range -I, Goods and Service Tax,
Thiru Vi Ka Nagar Division,
Chennai North Commissionerate,
Chennai Zone, Chennai.

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