

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 22ND DAY OF DECEMBER 2022 / 1ST POUSHA, 1944

WP(C) NO. 30901 OF 2022

PETITIONER:

2 B TRADELINKS,
MMC 23/35 2, SANTHIVANAM ROAD,
NETTOOR P.O, NEAR INTERNATIONAL MARKET,
ERNAKULAM - 682040,
REPRESENTED BY ITS MANAGING PARTNER
SRI. ABRAHAM DAVID.

BY ADVS.
AJI V.DEV
ALAN PRIYADARSHI DEV
S.SAJEEVAN

RESPONDENTS :

- 1 THE ASSISTANT COMMISSIONER,
1ST CIRCLE,
STATE GOODS & SERVICES TAX DEPARTMENT,
MINI CIVIL STATION, OLD BUS STAND,
SH 15, THRIPUNITHURA, PIN - 682 301.
- 2 GOODS AND SERVICES TAX NETWORK,
REPRESENTED BY ITS CHAIRMAN,
EAST WING, 4TH FLOOR, WORK MARK-1, AEROCITY,
NEW DELHI-, PIN - 110 037.

BY SMT.THUSHARA JAMES, SR.GP

SRI.SREELAL WARRIER, SC

SRI.S.MANU, DSGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22.12.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

The petitioner has approached this Court being aggrieved by Ext.P3 order cancelling the registration granted to the petitioner under the provisions of the CGST / SGST Acts. The petitioner was served with Ext.P2 show cause notice on 02.09.2021 proposing to cancel the registration of the petitioner for non filing of returns for a period of six months. It is the case of the petitioner that the petitioner had filed returns for the defaulted period but did not file any appeal under Section 107 against Ext.P3 order of cancellation. The petitioner also did not file any application for revocation of the order of cancellation within the time prescribed under Section 30 of the CGST / SGST Acts.

2. The learned counsel for the petitioner relies on the judgment of the Madras High Court in **Suguna Cut Piece Centre vs. Appellate Dy. Commissioner** [(2022) 99 GSTR 386]. The learned counsel appearing for the petitioner also relies on the judgment of a Division Bench of the Gujarat High Court in **Aggarwal Dyeing and Printing Works v. State of Gujarat & 2 Other(s)** [2022 (4) TMI 864] to content that system generated documents issued in same format cannot be accepted as sufficient compliance of the requirements of Section 29 of the CGST / SGST Acts, which required the issuance of a show cause notice and a hearing prior to cancellation of registration. He made a specific reference on paragraph 17 of the aforesaid judgment.

“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”.

3. The learned Senior Government Pleader refers to the counter affidavit filed on behalf of the 1st respondent and stated that there is no dispute that the petitioner failed to file returns for the specified period and therefore there is no illegality whatsoever in the order of cancellation. It is submitted that the procedure contemplated by law was followed before completing the proceedings against the petitioner. It is submitted that the petitioner did not apply for revocation within the time specified in Section 30 and also did not file any appeal within the time.

4. Having heard the learned counsel for the petitioner and the learned Senior Government Pleader for respondents, I am of the view that this writ petition is liable to be allowed. The show cause notice issued to the petitioner in this case is produced as Ext.P2. A perusal of Ext.P2 shows that the same has been issued in Form GST Reg 31. The said form is one for suspension of revocation and not for cancellation of registration. Further, in Ext.P2 the reasons stated for proposing cancellation of registration are recorded as under:

“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:

Returns furnished by you under Section 39 of the Central Goods and Services Tax Act, 2017

Observations

Failure to furnish returns for a continuous period of six months.

You are hereby directed to furnish a reply to the notice within thirty days from the date of service of notice.”

The notice is absolutely vague and it is not clearly specified with any clarity, the reasons for proposing cancellation even the period for which there was alleged failure to file returns is not specified. I have in my judgment in W.P (C) No.28783/2022 held as follows.

“5. Having heard the learned Senior Counsel for the petitioner and the learned Senior Government Pleader and Adv.Alfred, learned counsel appearing for the 2nd respondent, I am of the view that the petitioner is entitled to succeed. The reasons which compel me to take such a view are the following: -

(i) Ext.P5 show cause notice issued to the petitioner has been issued in Form GST REG-31. That form is to be issued in relation to proceedings for suspension of registration and is issued with reference to Rule 21A of the CGST/SGST Rules. It is clear that Form GST REG-31 is one relatable to proceedings for suspension of registration and cannot be treated as a show cause notice under Rule 21 of the CGST Rules, which requires the issuance of a notice in form GST REG-17. Ext.P5 does not even contain all the details contemplated by the form appended to the Rules. A reading of Ext.P5 suggests that the Officer issued the notice in form GST REG-31 by omitting specific details from the form and by treating it as a notice for cancellation. It is a principle

at the heart of administrative law that where the law requires a thing to be done in a particular manner, it must be done in that manner alone.

In ***Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422***, it was held:-

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor [(1875) 1 Ch D 426 : 45 LJCh 373] which was followed by Lord Roche in Nazir Ahmad v. King Emperor [(1936) 63 IA 372 : AIR 1936 PC 253] who stated as under:

“[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098] and again in Deep Chand v. State of Rajasthan [AIR 1961 SC 1527 : (1962) 1 SCR 662] . These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57] and the rule laid down in Nazir Ahmad case [(1936) 63 IA 372 : AIR 1936 PC 253] was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

Therefore, the action taken by the officer by initiating proceedings in form GST REG-31 of the CGST Rules and completing the proceedings for cancellation of registration by issuing Ext.P1 order is clearly without jurisdiction. If the Officer wishes to initiate proceedings for cancellation of registration, he must issue a notice as specified in Rule 21 of the CGST Rules and in form GST REG-17 and not in form GST REG-31.

(ii) The Division Bench of the Gujarat High Court in ***Aggarwal Dyeing and Printing*** (Supra) has considered an almost identical

situation. The Court considered the contents of the show cause notice issued in that case and came to the conclusion that the show cause notice was woefully inadequate inasmuch as it did not specify the reasons which compelled the Officer to initiate action for cancellation of registration. Even in the facts of this case, the show cause notice (Ext.P.5) reads thus:-

“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. returns furnished by you under section 39 of the Central Goods and Services Tax Act, 2017*

Observations

*Failure to furnish returns for a continuous period of six months
You are hereby directed to furnish a reply to the notice within thirty days from the date of service of this notice.*

xx xx xx xx xx xx”

Apart from the fact that Ext.P.5 is issued in the wrong form, it is also bad for the complete absence of any detail. It is clearly vague and therefore the law laid down in the judgments of the Gujarat High Court in **Aggarwal Dyeing and Printing (supra)** and **Sing Traders (supra)** clearly apply. I am in respectful agreement with the views expressed in those decisions. The judgments of the Karnataka High Court and the Madhya Pradesh High Court relied on by the learned Senior Government Pleader appear to have been handed down in completely different fact situations. I am also not inclined to follow the law laid down by the Court in those judgments;

(iii) The contention taken by the learned Government Pleader that since the Court deals with fiscal legislations, the law must be strictly interpreted in favour of the revenue is not a principle that applies to the situation that this Court is concerned. The Constitution Bench of the Supreme Court in ***Commissioner of Customs (Import), Mumbai***

v. ***Dilip Kumar and Company and others; (2018) 9 SCC 1***; held that provisions of a taxing statute have to be strictly construed in favour of the assessee in the event of doubt or ambiguity while exemption notifications granting concessions or exemptions have to be generally interpreted in favour of the revenue, again in the case of ambiguity. However, the Supreme Court in ***Government of Kerala and another v. Mother Superior Adoration Convent; (2021) 5 SCC 602*** has taken the view that where concessions or exemptions are granted with a specific purpose of promoting or encouraging a certain activity the principle that such concessions/exemptions must be interpreted in favour of the revenue does not apply. In the facts of these cases, this Court is concerned with the provisions of Sections 29/30 of CGST/SGST which gives to the power to cancel registration and also to revoke it. These are not provisions which need to be interpreted with reference to the principles laid down in the ***Dilip Kumar (supra)*** and in ***Mother Superior Adoration Convent.***”

For the above reasons, the writ petition is allowed. Ext.P3 stands quashed. The quashing of the impugned order of cancellation will not have the effect of

absolving the petitioner of any fiscal liability. The petitioner will be required to file all defaulted returns together with tax, late fee, interest, penalty etc., within a period of two weeks from the date on which the registration of the petitioner is restored in compliance with this judgment.

Any other contentions taken in the writ petition are left open.

Sd/-
GOPINATH P.
JUDGE

DK/AMG

APPENDIX OF WP (C) 30901/2022

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE COPY OF THE GST REGISTRATION
CERTIFICATE ISSUED TO THE PETITIONER DATED:
18-02-2019 |
| Exhibit P2 | TRUE COPY OF THE SHOW CAUSE NOTICE ISSUED BY
THE 1ST RESPONDENT DATED 02.09.2021 |
| Exhibit P3 | TRUE COPY OF THE ORDER FOR CANCELLATION OF
REGISTRATION OF THE PETITIONER PASSED BY THE
1ST RESPONDENT DATED 15.02.2022 |
| Exhibit P4 | TRUE COPY OF THE MONTHLY RETURN IN FORM GSTR
3B FOR THE MONTH OF FEBRUARY 2022 FILED ON
20.09.2022 |
| Exhibit P5 | TRUE COPY OF THE JUDGMENT IN WPC 19904 DATED
6.7.2022 OF THIS HON'BLE COURT |
| Exhibit P6 | TRUE COPY OF JUDGMENT IN TVL SUGUNA CUTPIECE
CENTER VS. APPELLATE DEPUTY COMMISSIONER
(ST) (GST), 2022 (2) TMI 933 - MADRAS HIGH
COURT DATED 31.01.2022 |