

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 14538 of 2023**

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AKSHAR ENTERPRISE  
Versus  
STATE OF GUJARAT  
=====

Appearance:

MR SHUBHAM JHAJHARIA(10231) for the Petitioner(s) No. 1  
MR CHINTAN DAVE, AGP for the Respondent(s) No. 1  
DS AFF.NOT FILED (N) for the Respondent(s) No. 1  
NOTICE SERVED BY DS for the Respondent(s) No. 2,3  
=====

**CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**  
and  
**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

**Date : 30/11/2023**

**ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr. Shubham Jhajharia for the petitioner and learned Assistant Government Pleader Mr. Chintan Dave for the respondent State.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the show

cause notice dated 23.06.2023 issued by respondent no.2 and all consequential proceedings that may have been initiated pursuant thereto.

3. Brief facts of the case are that the petitioner is registered under Gujarat Goods and Service Tax Act, 2017 (For short "the GGST Act") having Goods and Service Tax Identification No.ZA240623179165H.

3.1) The petitioner after receiving his registration under the GGST Act applied for change/amendment in place of business on 11.02.2023 which came to be allowed vide order of amendment dated 03.03.2023 and accordingly, an amended certificate was issued to the petitioner.

3.2) The impugned show cause notice dated 23.06.2023 came to be issued by the department in Form GST REG-17 purportedly in exercise of powers under section 29 of the GGST Act read with Rule 22(1) of the Gujarat Goods and Service Tax Rules, 2017 (For short "the GGST Rules").

3.3) Being aggrieved by such issuance of notice, the petitioner has preferred the present petition.

4. Learned advocate Mr. Shubham Jhajharia for the petitioner submitted that the show-cause notice called upon the petitioner to furnish reply within seven working days and to appear before the authority on 30.06.2023 at 12:00, failing which, the case would be decided ex-parte

on the basis of available records on merits. However, no details in connection to the allegations mentioned in notice or any documents in the connection to the allegations is provided to the petitioner along with the show cause notice and in absence of such details, the petitioner was not able to file any reply to the show cause notice.

4.1) It was submitted that the notice was not accompanied by any documents so as to clarify or substantiate the vague allegations made against the petitioner and also the body of notice did not elaborate on the reasons for the issuance of the show-cause notice. It was submitted that the notice therefore, in effect, did not disclose the basis for suo moto initiating the process for cancellation of

registration. It was submitted that due to such lack of details, the petitioner was unable to understand the reason for issuance of show cause notice on basis of which the petitioner can submit his reply to the concerned officer.

4.2) It was submitted that the show cause notice dated 23.06.2023 issued by the department in Form GST REG-17 against the petitioner firm is bad in law inasmuch as the show cause notice does not disclose any specific cause of action against the petitioner, so as to enable the petitioner to respond to the same and all that the notice mentions is "Rule 21(a) - Person does not conduct any business from the declared place of business."

4.3) In support of his submission,

reliance was placed on the decision in case of **M/s Mahadev Trading Company v. Union of India** in Special Civil Application No. 11262 of 2020 wherein Division Bench of this Court has held 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 C/SCA/11262/2020 ORDER 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.....

..... 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....." (emphasis added)"

4.4) Relying upon the said judgment, it was submitted that the impugned notice which do not disclose the allegations against the recipient of the notice and

which fails to mention the authority under which the hearing is to be held, cannot be sustained in law and the same is required to be quashed and set aside.

4.5) In support of his submission that no documentary material relying upon which the concerned officer issued the show-cause notice was provided along with the show-cause notice, reliance was placed on the decision in case of **I.E. Vittal v. Appropriate Authority** reported in (1996) 221 ITR 760 (AP), wherein Division Bench of Andhra Pradesh High Court held as follows:

".....31. In our view, when the Appropriate Authority had relied upon the documents to record the finding of understatement of the sale consideration, in all fairness, the copies of the documents should have been furnished to the agreement



holders particularly when they have brought to the notice of the authority that in spite of efforts they were not in a position to secure the same. We may observe here that where a statutory authority relies upon a document in a proceeding but denies a copy of the same to the affected party, he violates the principles of natural justice as the opportunity of being heard should be an effective opportunity but not an empty formality. Had copies of those documents been given to the petitioners, they would have been in a position to show that the consideration mentioned therein was overstated or would have brought on record circumstances under which a higher consideration was agreed upon between the parties, which did not represent fair market value. In the absence of the agreements relied upon by the Appropriate Authority, the agreement holders were handicapped to explain the same. It may be noticed that if the documents relied upon by the Appropriate Authority are excluded from discussion, there is no material to support the finding of understatement of consideration by more than 15 per cent in the agreement in question, recorded by the Appropriate Authority. We, therefore, hold that not providing copies of the agreements which were

relied upon by the Appropriate Authority to record an adverse finding against the agreement holders amounts to denial of opportunity of being heard resulting in violation of the principles of natural justice which would vitiate the proceedings...." (emphasis added).

4.6) It was submitted that in the absence of any material being provided on the basis of which impugned notice came to be passed, the petitioner did not have a fair opportunity to defend itself and therefore, the notice suffers from non application of mind and is defective, and cannot be sustained in eyes of law and is in violation of basic principles of natural justice. The impugned show cause notice therefore, deserves to be quashed and set aside.

4.7) In support of his submission that

as per proviso to Section 29(2) of the GGST Act, 2017 the proper officer is bound to give an opportunity of hearing before proceeding ahead and such opportunity of hearing has to be fair and effective and not merely an empty formality, reliance was placed on the decision of Calcutta High Court in case of **Commissioner Of Income-Tax v. Panna Devi Saraogl**, reported in 1970 78 ITR 728 Cal, wherein it is held as under:

"29. It is this opportunity of being heard which introduces the principle of natural justice. The opportunity, no doubt, must be reasonable and effective opportunity. It should not be a mere paper opportunity or any illusory opportunity." (emphasis added).

4.8) It was therefore, submitted that relying upon such legally defective and faulty notice, the department has

suspended registration of the petitioner, which in turn has the effect of depriving the petitioner of opportunity to do business and therefore, the impugned notice may be quashed and set aside.

5. On the other other hand learned Assistant Government Pleader Mr. Chintan Dave submitted that the impugned notice is just and proper inasmuch as the department having found that the petitioner was not conducting any business from the declared place of business, issued the impugned show cause notice proposing to cancel the registration granted to the petitioner and therefore, no interference is require to be made in the matter at the show cause notice stage.

6. On perusal of the tenor of impugned

show cause notice, it appears that neither specific reasons are assigned as to why the registration of the petitioner is proposed to be cancelled nor any supporting documents are attached to justify the reason.

7. The impugned notice only states that the registration is liable to be cancelled for the reason "Rule 21(a)- a person does not conduct any business from declared place of business." Thus it is evident from the notice itself that the impugned notice is bereft of any reason or documentary evidence in support of such reason.

8. By now it is well settled that the reasons are heart and soul of any order and non-communication of the same amounts

to denial of reasonable opportunity of hearing, resulting in miscarriage of justice and resultantly violates principles of natural justice. Division Bench of this Court in case of **M/s Bhati Enterprise v. Union of India** (order dated 26.07.2023 in Special Civil Application No.731 of 2023) held as under:

“5. This court in the case of **Sarvoday Impex vs. Union of India rendered a decision on 07.06.2023 in Special Civil Application No. 903 of 2023** in an identical matter relying on a decision of the coordinate bench of this court in the case of **Aggrawal Dyeing and Printing Works vs. State of Gujarat And Others reported in Special Civil Application No. 18860 of 2021 decided on 24.02.2022**. The relevant paras of the said decision read as under:

“[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)]



ReferenceNumber:ZA24072007  
94641 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.

[14] In view of the aforesaid facts and reasons, the present petition is allowed. The impugned show-cause notice dated 06.01.2023, being

without reasons, is cryptic and deserves to be quashed and set aside, and is 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 petitioner and to pass appropriate order in accordance with law. The concerned respondent is hereby directed to restore the registration of the petitioner forthwith.

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

[16] It is clarified that this Court has not examined the merits of the case of the parties.”

6. In view of the above, since the present petition is squarely covered by the aforesaid order, the impugned notice being cryptic and without reasons deserves to be quashed and set aside.”

9. In view of above settled law, the petition is allowed. The impugned show cause notice dated 23.06.2023 is hereby quashed and set aside. The respondent

authorities shall issue fresh notice with particulars of reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the petitioner and to pass appropriate order in accordance with law. The concerned respondent is hereby directed to restore the registration of the petitioner forthwith.

10. It would be open for the petitioner to respond to such notice by filing objection/reply with necessary documents, if relied upon. It is clarified that this Court has not examined the merits of the case.

**(BHARGAV D. KARIA, J)**

**(NIRAL R. MEHTA, J)**

RAGHUNATH R NAIR