



A.F.R.

Court No. - 21

Case :- WRIT TAX No. - 1511 of 2022

Petitioner :- M/S Jaiprakash Thekedar

Respondent :- Commissioner, Commercial Taxes And
Another

Counsel for Petitioner :- Pooja Talwar

Counsel for Respondent :- C.S.C.

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Jayant Banerji,J.

1. Heard Ms Pooja Talwar, learned counsel for the petitioner and Sri Ankur Agarwal, learned counsel for the revenue.

2. The petitioner is aggrieved by cancellation of the registration of the petitioner-firm under the provisions of the Uttar Pradesh Goods and Services Tax Act, 2017 and the coercive action sought to be taken against the petitioner as a result of cancellation of the registration.

3. The petitioner was given a show cause notice on 31.08.2019 requiring the petitioner to submit reply within seven working days from the date of service of the notice. The notice further mentions that if the petitioner fails to furnish 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 on merits. It was followed by impugned

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cancellation order dated 21.09.2019 which reads as below :

"This has reference to your reply dated 10/09/2019 in response to the notice to show cause dated 31/08/2019 whereas no reply to notice to show cause has been submitted.

The effective date of cancellation of your registration is 21/09/2019

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 01/10/2019 failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.

Head	Central Tax	State Tax/UT	Integrated Tax	Cess
Tax	0	0	0	0
Interest	0	0	0	0
Penalty	0	0	0	0
Others	0	0	0	0
Total	0.0	0.0	0.0	0.0

Place : Uttar Pradesh

Date : 21/09/2019

JAI PRAKASH
Assistant Commissioner
Mahoba, CTO"

4. Learned counsel for the petitioner submitted that the service of show cause notice on the petitioner was not sufficient, as it was not sent by registered post. It is urged that the uploading of the aforesaid notice on the common portal is not sufficient in view of the technical

glitches being faced in respect thereto. In this regard, reliance has been placed on a judgement of Madras High Court in ***Pushpam Reality and Others Vs. State Tax Officer & Others*** decided on 04.02.2022. It is further submitted that show cause notice although mentions that in case the petitioner does not appear on the appointed date and time fixed for personal hearing, *ex parte* order would be passed but the notice does not specify any date and time and thus leaving the petitioner in dark about the date and time on which the petitioner had to appear for personal hearing. It amounts to violation of statutory requirement of according hearing to the person against whom action is proposed to be taken for cancellation of the registration and also breach of principles of natural justice.

5. Learned counsel appearing on behalf of the revenue submits that service of notice via common portal is recognized mode of service under Section 169 of the Act, and therefore, no exception can be taken to the mode of service. However, he is not in a position to dispute that show cause notice does not mention date and time on which the petitioner was supposed to appear for personal hearing.

6. Under first proviso to sub Section (2) to Section 29 of the Act, the person concerned has to be given an opportunity of being heard. Rule 22(1) of the U.P. Goods and Service Tax Rules, 2017 provides that where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under Section 29 of

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the Act, he shall issue a notice to such persons in Form GST REG-17 requiring him to show cause within a period of seven working days from the date of service of such notice as to why such registration be not cancelled. Form GST REG-17 reads as follows :

“Form G.S.T. REG-17

[See Rule 22 (1)]

Reference Number- <<Date>>
To
Registration Number (GSTIN/UIN)
(Name)
(Address)

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.
- 2.
- 3.
- ...

You are hereby directed to furnish a reply to this notice within seven working days from the date of service of this notice.

You are hereby directed to appear before the undersigned on DD/MM/YYYY at HH/MM.

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.

Signature
<Name of the Officer>
Designation
Jurisdiction

Place :
Date :

7. The show cause notice given to the petitioner was as follows :

“Form GST REG-17

[See Rule 22(1)]

Reference Number : ZA090819157466S **Date :** 31/08/2019

To

JAY PRAKASH KHEWARIYA

KABRAI, KABRAI, KABRAI, Mahoba, Uttar Pradesh, 210424

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. *Any Taxpayer other than composition taxpayer has not filed returns for a continuous period of six months.*

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 : Uttar Pradesh

Date : 31/08/2019

JAI PRAKASH

Assistant Commissioner”

8. The show cause notice which has been given to the petitioner is not in prescribed format as it is conspicuous by absence of the date and time on which the noticee was to appear for personal hearing. It is also clear from the prescribed format that the noticee has to be afforded opportunity of personal hearing and for that purpose he has to be informed in advance, the date and time on which hearing will take place. Since in the instant case, the show cause notice does not mention the date

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and time appointed for personal hearing, therefore, in our opinion, the proceedings held in pursuance thereof are rendered illegal, void and a nullity in the eyes of law. Resultantly, the impugned order is hereby quashed.

9. The petition succeeds and is **allowed** to the above extent with liberty to the Revenue to proceed in accordance with law.

Order Date :- 22.12.2022
S.Chaurasia

(Jayant Banerji,J.) (Manoj Kumar Gupta,J.)