

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 3224 of 2022**

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ARSH TRADERS THROUGH PROPRIETOR ASLAM SODAGRBHAI SHEKH
Versus
COMMERCIAL TAX OFFICER, GHATAK 65, SURAT

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Appearance:

MR HARDIK V VORA(7123) for the Petitioner

MR TRUPESH KATHIRIYA, AGP for the Respondent(s) No. 1 - State

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**CORAM: HONOURABLE THE CHIEF JUSTICE MS. JUSTICE
SONIA GOKANI
and
HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

Date : 17/02/2023

ORAL ORDER

**(PER : HONOURABLE THE CHIEF JUSTICE MS. JUSTICE SONIA
GOKANI)**

1. Petitioner is before this Court seeking to challenge the action of the respondent – Authority of cancelling the registration and also of rejecting of application for revocation of cancellation under the Gujarat Goods and Service Tax Act, 2017.

2.1 The petitioner is a proprietary concern dealing in all types of scrap. It was granted TIN Number on 13.06.2013 under the Gujarat Value Added Tax Act, 2003 and he is a regular tax payer.

2.2 Show cause notice was issued on 24.06.2019 by the respondent by the cancellation of registration on the ground that it has been obtained by means of fraud and willful mistake and by suppression of facts. The petitioner was directed to appear on 28.06.2019, however, when no physical notice was received and as the petitioner is not techno savvy, he could not accede.

2.3 On 26.07.2019, pursuant to the said notice, respondent cancelled the registration of the petitioner without making any mention or reason of cancellation.

2.4 Petitioner preferred an application for revocation of cancellation of registration in Form GST REG-21 on portal on 01.08.2019. According to the petitioner, he had not been responded to on numerous occasions yet requested the respondent for time. When the restriction was released in post COVID period, he again made a request to the respondent to either accept or reject the application. When no actions had been taken by the respondent for about one and a half years, he had also raised the grievance for the revocation of registration on Centralized Public Grievance Redress and Monitoring System (CPGRAM).

2.5 When emphasized that he had no intention to

defraud the authority or make any suppression of facts, the petitioner, on 06.08.2019 on the charge of fake purchases is prosecuted, however, no charge-sheet till date has been filed and no show-cause notice has been issued by the department till date. Even liability has not been conveyed by the DGGI. Petitioner, also has not received any response from respondent till 24.11.2021 and therefore, he preferred Special Civil Application No.4422 of 2021. This Court, allowing the petition, directed thus :-

“12. It emerges from the material on record that the application for revocation has been preferred by the petitioner on 16.08.2019, no procedure has been followed thereafter by the proper officer and he has chosen not to issue any notice to show cause indicating his intention of rejection. When the statutory Rules provide for prescribed limit, he could not have simply sat tight over this application without doing anything in that regard and without fail he shall need to complete this process within one week from the date of receipt of the copy.

13. Noticing the fact that it is only after he decides not to accede to the request of revocation of cancellation that such a stage would come at that eventuality be also taken note of once the officer chose not to allow the request straightway he would have further period of 4 (four) weeks, 1 (one) week for issuance of notice and availing time to petitioner of one week as also to allow him representation and then 2 (two) weeks thereafter for him to decide finally. However, in the event he is agreed with the request of revocation of cancellation, the same shall be decided in a week's time.”

2.6 The respondents were requested thereafter on 14.12.2021 for deciding the revocation application pursuant to the order of this Court.

2.7 Respondent No.3 had asked the petitioner to provide documentary evidence on or before 23.12.2021. The written submissions were made on 23.12.2021, making a request to revoke the order passed by the respondent for cancelling the GST registration, as he neither tampered with the document nor committed any fraud. It is his grievance that, without considering the submissions on 05.01.2022, without issuing the show-cause notice, the respondent has rejected the application for revocation and in the order, it has been mentioned that he is involved bogus billing with various parties. This was at no point of time event the part of show cause notice.

2.8 On the ground that the order passed is without providing the adequate opportunity to explain the transactions to various parties and also on further grounds, this petition is being preferred. The main prayers sought for are as follows :

“5.1(a) A writ of mandamus, or any other appropriate writ, order and/or directions in the nature of mandamus to quash the order dated 26.07.2019 for cancellation of registration under GGST Act, 2017 and order dated 05.01.2022 issued by

the respondent for rejection of application for revocation of cancellation order;

(b) A writ of certiorari, or any other appropriate writ, order and/or directions in the nature of certiorari quashing the order dated 05.01.2022 without providing proper show cause notice;

(c) Pending the hearing and final disposal of the petition, allow petitioner to continue business on the basis of registration certificate;"

3.1 On issuance of the notice, the affidavit-in-reply is filed by respondent No.1, reiterating the allegations and urging this Court that for quashing of the order dated 26.07.2019 cancelling the registration under the GGST Act and for rejection of the revocation of cancellation dated 05.01.2022. There are alternative and efficacious remedies provided. No order of rejection of revocation of cancelled registration was subjective in nature and it had been rejected considering the amount of transactions and also the parties from which the bogus billing transactions were entered into by the petitioner. It is also submitted that the application of the petitioner for revocation was approved because of the technical glitch in the portal. It was on the basis of details furnished that the Additional Tax Commissioner, Surat approved the application and a fresh show cause notice for cancellation on account of bogus billing transaction was issued. There are 107 firms involved in bogus billing transactions investigated by the Director General

of Intelligence and a detailed report was supplied. The statement of the petitioner and his brother has been taken by the concerned authority on 10.04.2019 and 06.08.2019, where there are admissions which have come in relation to the bogus billing transactions.

3.2 It is further contended that the petitioner has not provided documents in consonance with the grievance raised by the petitioner and he is not found at the principal place of business. A detailed order of 05.01.2022 was passed after providing an opportunity of being heard.

3.3 It is further the say that the petitioner had utilized 99.55% of ITC in paying the tax liability over the turn over as uploaded on portal for financial years 2017-18, 2018-19 and 2019-20. Since he failed to pay the tax liability as required in accordance with the law and further failed to produce any document to sustain registration under GST, the same has led to cancellation and further rejection of revocation.

4. We have heard learned advocate Mr.Hardik Vora for the petitioner and learned AGP Mr.Trupesh Kathiriya for the respondent State.

5.1 It is not in dispute from the record that in earlier petition - Special Civil Application No.4422 of 2021, the prayers sought for by the petitioner was to quash the order dated 26.07.2019 issued by the respondent for cancellation of registration under the GST Act. This Court had noticed that no procedure had been followed by the proper officer and had not chosen to issue any notice to show cause indicating his intention of rejection. Certain statutory rules, which provided the prescribed limit, were disregarded and therefore, this Court had acceded to the request of hearing the matter from the stage where it was left by giving the timeline for those stages is to be completed.

5.2 It appears that pursuant to this order dated 24.11.2021, we noticed that on 13.12.2021, a letter is addressed to the Commercial Tax Officer seeking the revocation of cancellation of pending matter, where it is urged that without following the due procedure prescribed under the CGST Rules, the application for revocation is in the Form of GST REG-21 and GST portal has been preferred. It is also further urged that the Court had passed an order for ready reference, the application for revocation due to unknown reasons is yet to be decided, the directions of the Court have been sent. On 16.12.2021, he had been requested to furnish the documentary evidences. Yet another

application of 27.12.2007 has been given, where also he has taken a stand that there is no show cause notice giving the details. He has no idea as to how they have alleged of the fraud or misrepresentation, the authority concerned for want of necessary documents and also on the ground that this is a case where investigating agency has already noticed. The bogus billing in case of the present petitioner and others, has already denied the cancellation of registration.

5.3 We could notice that the show cause notice, which has been issued, is quite cryptic. This Court in *Special Civil Application 18860 of 2021 (2022) 137 Taxmann.com 332 (Gujarat) – Aggarwal Dyeing and Printing Works versus State of Gujarat & Ors.*, has at length decided this issue. The relevant observations are made in Para 9 onwards, which are as follows :

“9. In light of the aforesaid provisions, we notice that registration of any business entity under the GST Law implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on behalf of the government and to avail Input tax credit for the taxes on his inward supplies. Without registration, a person can neither collect tax from his customers nor claim any input tax credit of tax paid by him. It appears that registration in GST is PAN based and State specific. Thus, supplier has to get himself register in each of such State or Union territory from where he effects supply. The Act empowers proper officer and registration granted under GST can be

cancelled for specified reasons. The cancellation can either be initiated by the department on their own motion or the registered person can apply for cancellation of their registration.

9.1 From the bare reading of the rules, 2017 along with statutory provision, the reasons for cancellation can be curled out as under :

a) a person registered under any of the existing laws, but who is not liable to be registered under the GST Act;

b) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of;

c) there is any change in the constitution of the business;

d) the taxable person (other than the person who has voluntarily taken registration under sub-section (3) of section 25 of the CGST Act, 2017) is no longer liable to be registered;

e) a registered person has contravened such provisions of the Act or the rules made thereunder;

f) a person paying tax under Composition levy has not furnished returns for three consecutive tax periods;

g) any registered person, other than a person paying tax under Composition levy has not furnished returns for a continuous period of six months;

h) any person who has taken voluntary

registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration;

i) registration has been obtained by means of fraud, willful misstatement or suppression of facts.

9.2 The procedure for cancellation of registration can be summarized as under :

i. A person already registered under any of the existing laws (Central excise, Service tax, VAT etc.), but who now is not liable to be registered under the GST Act has to submit an application electronically by 31st December 2017, in FORM GST REG-29 at the common portal for the cancellation of registration granted to him. The Superintendent of Central Tax Cancellation of Registration in GST 12 GST FLYERS shall, after conducting such enquiry as deemed fit, cancel the said registration.

ii. The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under Central Goods and Services Tax Act.

iii. In the event, the Superintendent of Central Tax has reasons to believe that the registration of a person is liable to be cancelled, a notice to such person in FORM GST REG-17, requiring him to show cause, within a period of seven working days from the date of the service of such notice, as to why his registration shall not be cancelled; will be issued.

iv. The reply to the show cause notice issued has to be furnished by the registered person in FORM REG- 18 within a period of seven working days.

iv. In case the reply to the show cause notice is found to be satisfactory, the Superintendent of Central Tax will drop the proceedings and pass an order in FORM GST REG -20.

v. However, when the person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the Superintendent of Central Tax will issue an order in FORM GST REG-19, within a period of thirty days from the date of application or, as the case may be, the date of the reply to the show cause issued, cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty.

vi. The registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher.

vii. In case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be

prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

viii. The cancellation of registration shall not affect the liability of the person to pay tax and other dues 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.

9.3 At the same time, the statute also provides for revocation of cancellation :

i. When the registration has been cancelled by the Proper Officer (Superintendent of Central Tax) on his own motion and not on the basis of an application ,then the registered person, whose registration has been cancelled, can submit an application for revocation of cancellation of registration, in FORM GST REG-21, to the Proper Officer (Assistant or Deputy Commissioners of Central Tax), within a period of thirty days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

ii. However, if the registration has been cancelled for failure to furnish returns, application for revocation shall be filed, only after such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns.

iii. On examination of the application if the Proper Officer (Assistant or Deputy

Commissioners of Central Tax) is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, then he shall revoke the cancellation of registration by an order in FORM GST REG-22 within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant.

iv. However, if on examination of the application for revocation, if the Proper Officer (Assistant or Deputy Commissioners of Central Tax) is not satisfied then he will issue a notice in FORM GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation should not be rejected and the applicant has to furnish the reply within a period of seven working days from the date of the service of the notice in FORM GST REG-24.

v. Upon receipt of the information or clarification in FORM GST REG-24, the Proper Officer (Assistant or Deputy Commissioners of Central Tax) shall dispose of the application within a period of thirty days from the date of the receipt of such information or clarification from the applicant. In case the information or clarification provided is satisfactory, the Proper Officer (Assistant or Deputy Commissioners of Central Tax) shall dispose the application as per para (iii) above. In case it is not satisfactory the applicant-Cancellation of Registration in GST 16 GST FLYERS will be mandatorily given an opportunity of being heard, after which the Proper Officer (Assistant or Deputy Commissioners of Central Tax) after recording the reasons in writing may by an order in FORM GST REG- 05, reject the application for revocation of cancellation of

registration and communicate the same to the applicant.

vi. The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under Central Goods and Services Tax Act.

10. *Thus, upon appreciation of the scheme of Act, where specific forms have been prescribed at each stage right from registration, cancellation and revocation of cancellation of registration, the same are to be strictly adhered too. At the same time, it is equally important that the Proper Officer empowered under the said Act adheres to the principles of natural justice.*

11. *At the outset, we notice that it is settled legal position of law that reasons are heart and soul of the order and non communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice. This Court is bound by the said judgments hereinafter referred to. The necessity of giving reason by a body or authority in support of its decision came for consideration before the Supreme Court in several cases. Initially, the Supreme Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of the Supreme Court in A.K. Kraipak v. Union of India, (1970) 1 SCR 45. The Hon'ble Supreme Court vide judgments in the cases of Ravi Yashwant Bhoir v. District Collector Raigad, (2012) 4 SCC 407, Sant Lal Gupta v. Modern Cooperative Group Housing Society Limited, (2010) 13 SCC 336; Kranti Associates Private Limited v. Masood Ahmed*

Khan, (2010) 9 SCC 496; Abdul Ghaffar v. State of Bihar, (2008) 3 SCC 258, has expanded the horizon of natural justice and reasons have been treated part of the natural justice. It has gone to the extent in holding that reasons are heart and soul of the order. The absence of reasons renders an order indefensible/unsustainable particularly when it is subject to appeal/revision. It is to be noted that in the case of Kranti Associates v. Masood Ahmed Khan, (2010) 9 SCC 496, the Hon'ble Supreme Court after considering various judgments formulated certain principles 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 life blood 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 (See David Shapiro in Defence of

Judicial Candor (1987) 100 Harvard Law Review 731-737);.

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. See (1994) 19 EHRR 553 at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decision.”

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”.

Thus, the position of law that emerges from the decisions mentioned above, is that assignment of reasons is imperative in nature and the speaking order doctrine mandates assigning the reason which is the heart and soul of the decision and said reasons must be the result of independent re-appreciation of evidence adduced and documents produced in the case.

12. *At this stage it would be germane to refer to observations made by the Andhra Pradesh High Court in the case of MRF Mazdoor Sangh vs. The Commissioner of Labour & Others, reported in 2014 (3) ALT 265, MANU/AP/1685/2013, wherein the matter of cancellation of registration of trade union, it was held that :*

“The show cause notice should reflect the jurisdictional facts based on which the final order

is proposed to be passed. The person proceeded against would then have an opportunity to show cause that the authority had erroneously assumed existence of a jurisdictional fact and, since the essential jurisdictional facts do not exist, the authority does not have jurisdiction to decide the other issues.”

12.1 We find that the aforesaid observation would squarely apply to the present facts of the case on hand. Thus, the sum and substance of various judgments on the principles of natural justice is to the effect that wherever an order is likely to result in civil consequences, though the statute or provision of law, by itself, does not provide for an opportunity of hearing, the requirement of opportunity of hearing has to be read into the provision.

13. It cannot be disputed that the writ applicant is liable to both civil and penal consequences pursuant to the impugned order of cancellation of certificate of registration. In all the writ applications we could note from the tabular details that the show cause notice though issued in the prescribed form does not elaborate the reasons and the one line reason mentioned is nothing but the reproduction of either of the reasons provide under rules regarding cancellation of registration. It appears from the materials on record that the respondent no.2 issued a show-cause notice dated 18th September, 2018 in the Form GST REG-17, calling upon the writ-applicant to show-cause as to why the registration under the GST should not be cancelled. Such notice issued by the respondent no.2 is under Rule 22(1) of the Central Goods and Services Tax Rules, 2017. The notice dated 18th September, 2018 referred to above reads as under :

“Form GST REG-17

[See Rule 22(1)]

Reference Number : ZA240918027128D

Date : 18/09/2018

To

Registration no. (GSTIN/Unique ID) : 24AEXPA3306
SANJEEV PREM AGGARWAL
SURVEY NO.230, OPP. MARIYA BANK,
B/H RANIPUR VILLAGE, NAROL,
Ahmedabad, Gujarat 382405.

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 Tax payer other than composite 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.

You are hereby directed to appear before the undersigned
on 27/09/2018 at 12:42.

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

Signature valid digitally signed by OS
Goods and Service Tax Network 1.
Date: 2018.09.18 13.00.44"

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.

14. We further notice that the respondent authority

has failed to extend sufficient opportunity of hearing before passing impugned order, inspite of specific request for adjournment sought for. Even the impugned order is not only non speaking, but cryptic in nature and the reason of cancellation not decipherable therefrom. Thus, on all counts the respondent authority has failed to adhered to the aforesaid legal position. We therefore, have no hesitation in holding that the basic Principles of natural justice stand violated and the order needs to be quashed as it entails penal and pecuniary consequences.

15. *We would be failing in our duty if we do not draw the attention of the Appellate Authority who has mechanically disposed off the appeals on the ground of delay. Apt would be to revisit the observations of the Supreme Court with regard to reasonable opportunity in the case of Union of India vs. Jesus Sales Corporation, reported in 1996 (4)SCC 69, wherein it is observed that a practice has developed holding that even in the absence of a provision providing for an opportunity of hearing, such a provision is required to be read into the Rules governing the case, particularly, when an order being made is likely to have civil consequences. The Hon'ble Supreme Court has emphasize up on the appellate court to have the approach tilting in favour of providing fair and reasonable opportunity of hearing while dealing with condonation of delay application in filing appeal. The relevant observation made by the Hon'ble Supreme Court in the case of Jesus Sales Corporation (supra) in para 2, are as under :*

“The Appellate authority may dispense with such deposit in its discretion. The proviso relating to the condonation for delay in filing the appeal is more or less on the pattern of Section 5 of the Limitation Act. Some how, a practice has grown throughout the country that before rejecting the

prayer for condonation of delay in filing the appeal or application, opportunities are given to the appellants or petitioners, as the case may be, to be heard on the question whether such delay be condoned. Opportunities to be heard are also the contesting respondents in such appeals. In different statutes given to where power has been vested in the Appellate authority to condone the delay in filing such appeals or applications, there are no specific provisions in those statutes saying that before such delays are condoned the appellants or the applicants shall be heard, but on basis of practice which has grown during the years the courts and quasijudicial authorities have been hearing the appellants and applicants before dismissing such appeals or applications as barred by limitations. It can be said that courts have read the requirements of hearing the appellants or the applicants before dismissing their appeals or applications filed beyond time on principle of natural justice, although the concerned statute does not prescribe such requirement specifically.”

15.1 The Appellate authority ought to have appreciated that the writ applicants at relevant point of time i.e. in year 2017, applied for registration which request was favourably considered by the authorities under the Act with a specific registration number allotted to the writ applicant. It was a transitional phase, whereby the old CST Act was repealed and the new regime of CGST/ GGST has come into force. With the different forms and procedure envisaged there under, any layman is bound to take time to adhered to the norms. The Record reveals that subsequently the writ applicants have claim to have filed their returns and have even deposited all dues. We further notice that such exercise has been undertaken through the writ applicant's Tax Consultant who were professionally

engaged to undertake such task. Unfortunately, information of the returns for certain period not being uploaded, surfaced in the year 2019 and the cause explained suggest that circumstances were beyond the writ applicant's reach. In such peculiar circumstances, it was least expected of the Appellate authority to condone the delay for filing appeal, more so, with the Onset of Pandemic Covid-19, preventing further follow up action. In the peculiar facts and circumstances, the authority ought to have condoned the delay which unfortunately was not done, despite the writ applicant having made a fervent request for condonation of delay in filing appeal seeking revocation of cancellation of registration.

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.*

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.

18. *Our final conclusion are as under:*

18.1 *Until the Department is able to develop and upload an appropriate software in the portal which would enable the Department to feed all the necessary information and material particulars in the show cause notice as well as in the final order of cancellation of registration that may be passed, the authority concerned shall issue an appropriate show cause notice containing all the necessary details and information in a physical form and forward the same to the dealer by RPAD. In the same manner, when it comes to passing the final order, the same shall also be passed in a physical form containing all the necessary information and particulars and shall be forwarded to the dealer by RPAD.*

18.2 *Over a period of time, we have noticed in many matters that the impugned order cancelling the registration of a dealer travels beyond the scope of the show cause notice. Many times, the dealer is taken by surprise when he gets to read in the order that the authority has relied upon some inspection report or spot visit report etc. If the authority wants to rely upon any particular piece of evidence then it owes a duty to first bring it to the notice of the dealer so that if the dealer has anything to say in that regard, he may do so. Even if the authority wants to rely on any documentary evidence, the dealer should be first put to the notice of such documentary evidence and only thereafter, it may be looked into.*

18.3 *The aforesaid may appear to be very trivial issues but, it assumes importance in reducing the unnecessary litigation. Our concern is that on account of procedural lapses, the High Court should not be flooded with writ applications. The procedural aspects should be looked into by the authority concerned very scrupulously and diligently. Why unnecessarily give any dealer a chance to make a complaint before this Court when it could have been easily avoided by the department.*

19. *In the result, all the writ applications deserve to be allowed solely on the ground of violation of principles of natural justice and, accordingly, the writ applications are allowed. We quash and set aside the respective show cause notices of all the writ applications, seeking cancellation of registration as well as the consequential respective impugned orders cancelling registration with liberty to the respondent No. 2 to issue fresh notice with particulars of reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the writ applicants, and to pass appropriate speaking orders on merits. It is needless to mention that it shall be open for the writ applicants to respond to such notices by filing objections / reply with necessary documents, if relied upon. We clarify that we have not gone into merits of the case.*

Sd/-

(J. B. PARDIWALA, J)

Sd/-

(NISHA M. THAKORE, J)

(PER : HONOURABLE MR. JUSTICE J.B. PARDIWALA)

1. My Esteemed Sister, Nisha Thakore, J. has just

delivered a very important order as the directions contained therein will go a long way in reducing the hardships and difficulties being caused to the dealers on account of the technical bottlenecks or glitches in the GSTN Portal.

2. India is at the forefront so far as the Information Technology Supremacy is concerned. The GSTN i.e. the Goods and Service Tax Network, is one of the most significant achievements in the history of Indian Indirect Taxation. Since July, 2017, the implementation of GST in India is due to the GSTN. However, still there are many issues which the GSTN need to address itself. There is always a scope of improvement in the functioning and technical performance of the GSTN. Due compliance of the laws of GST involves lot of technology and not just the law. Using the right technology for the right process in an efficient manner will definitely reduce the hardships and difficulties, which the small dealers may have to face. It is extremely important as on date to ensure that the technical glitches or bottlenecks in the portal are attended at the earliest and taken care off.

Sd/-

(J. B. PARDIWALA, J) ”

6. None of the findings and observations in any manner shall prejudice the rights of either side in pursuing the respective stands before the authority concerned.

7. The respondent shall be at liberty to initiate the action by giving a detail fresh show-cause notice within two (02) weeks from the receipt of copy of this order.

Direct service is permitted.

(SONIA GOKANI,CJ)

(SANDEEP N. BHATT,J)

M.H. DAVE

