

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. 28783 OF 2022

PETITIONER:

M/S.PANKAJ COTTAGE
TEMPLE ROAD, MUNNAR
IDUKKI DISTRICT, PIN - 685612
REPRESENTED BY MANAGING PARTNER E.J VARKEYACHAN

BY ADV S.SUJIN

RESPONDENTS:

- 1 THE GOODS AND SERVICE TAX OFFICER
CENTRAL TAX AND CENTRAL EXCISE
MUNNAR, IDUKKI DISTRICT, PIN - 685612
- 2 THE ASSISTANT COMMISSIONER CENTRAL TAX AND CENTRAL
EXCISE, DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
GOVERNMENT OF INDIA, IDUKKI DIVISION,
K.P VARKEYS MALL, IIND FLOOR,
ROTARY JUNCTION, THODUPUZHA -, PIN - 685584
- 3 THE APPELLATE AUTHORITY GOODS AND SERVICE TAX
C.R BUILDING, I.S PRESS ROAD,
COCHIN, PIN - 682018

BY ADV M.S.AMAL DHARSAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioner is in this court aggrieved by Ext.P1 order cancelling the registration granted to the petitioner under the Central Goods and Services Tax Act/ the State Goods and Services Tax Act [Hereinafter referred to as the 'CGST/SGST Acts'], in the exercise of jurisdiction under Section 29 of those enactments.

2. The facts necessary for an adjudication of the issue raised may be briefly noticed. The petitioner suffered Exhibit P1 order cancelling the registration granted under the CGST/SGST Acts. Ext P.1 was issued on 04-04-2022. Though Ext.P.1 appears to have been preceded by a show cause notice issued electronically, the petitioner has a case that the show cause notice never came to his attention. On coming to know of the order cancelling the registration, the petitioner applied for revocation, which application was rejected by Ext.P3, finding that the application for revocation was beyond the time prescribed under Section 30 of the CGST/SGST Acts. The petitioner has therefore filed an appeal under Section 107 of the CGST/SGST Acts, and the same is pending consideration of the first appellate authority.

3. Mr. N.N. Suganapalan, learned Senior Counsel appearing for the petitioner, on the instructions of Adv. S. Sujin, would contend that the entire procedure adopted by the respondents in cancelling the registration of the petitioner is absolutely illegal and unsustainable. He points out with reference to the show cause notice issued prior to cancellation of the registration that the said show cause notice itself is not in the manner prescribed by the Rules. It is submitted that the show cause notice should have been issued in Form GST REG-17. It is

submitted that the show cause notice is issued in Form GST REG-31, which is the form applicable to proceedings leading to the suspension of the registration for reasons specified. It is further pointed out with reference to the particulars required in the show cause notice [Form GST REG-17] that none of those particulars are specified in Ext.P5 show cause notice issued to the petitioner. It is submitted that though Ext.P6 specifies that it is issued in form GST REG-31, even that form has not been used in its entirety. It is submitted that the officer issued a notice in a form containing vague details of the reasons for cancellation, and this is not permissible in law. The Learned Senior Counsel appearing of the petitioner refers to the judgment of a Division Bench of the Gujarat High Court in ***Aggarwal Dyeing and Printing v. State of Gujarat*** (Judgment dated 24.2.2022 in Special Civil Application No. 18860/2021 and connected cases) as also the judgment of the same Court in ***Sing Traders v. State of Gujarat*** (Judgment dated 6.4.2022 in Special Civil Application No. 6315/2022) to contend that where the show cause notice is vague and where the order of cancellation also does not specify the factors which lead to the cancellation of registration, the entire proceedings must be held bad in law. He submits that the delay in filing returns and payment of tax for the period of default was not wilful and was on account of severe financial stress.

4. Adv. Thushara James, the learned Senior Government Pleader appearing for the respondents, would refer to the provisions of Sections 29 and 30 of the CGST/SGST Acts and the provisions of Rule 22 (1) & 21 A of the CGST/SGST Rules as also the relevant forms namely Form GST REG-17 and Form GST REG-31 to contend that the scheme of cancellation of registration is inbuilt into the provisions of Sections 29 and 30. It is submitted that the CGST/SGST Acts being

fiscal legislations, the provisions must be interpreted strictly in favour of the revenue. It is submitted that the provisions in Section 29 are incorporated for the purposes of ensuring strict compliance with tax laws and the failure of the petitioner to file returns (which fact is not disputed) led to the cancellation. It is submitted that the judgment of the Madras High Court in ***Suguna Cutpiece Center v. Appellate Deputy Commissioner(ST) GST), Salem;*** (2022) 99 GSTR 386 (Mad) and those of the Gujarat High Court in ***Aggarwal Dyeing and Printing (supra) & Sing Traders*** actually travel outside the scheme of provisions contained in that Act and therefore should not be followed by this court. It is submitted that the notices issued are ones generated by the system and convey with sufficient clarity the reason for taking steps for cancellation. The learned Senior Government Pleader also relies on the judgment of the Karnataka High Court in ***M/s. M.S. Retail Private Limited v. Union of India*** [Judgment dated 7-10-2020 in W.P No. 9041 of 2020] as also the judgment of the Madhya Pradesh High Court in ***Rajdhanai Security Force Pvt. Ltd. v. Union of India*** [Judgment dated 25.4.2022 in W.P No. 11498 of 2021] to contend that this Court should not interfere with the order cancelling the registration of the petitioner as there is no error of jurisdiction.

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.P1 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

AMG/SKP

APPENDIX OF WP (C) 28783/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORDER DATED 04/04/2022
- Exhibit P2 TRUE COPY OF THE REQUEST SUBMITTED BY THE
PETITIONER DATED 14/07/2022
- Exhibit P3 TRUE COPY OF THE REPLY DATED 22/08/2022 ISSUED BY
THE 2ND RESPONDENT
- Exhibit P4 TRUE COPY OF THE MEMORANDUM OF APPEAL SUBMITTED BY
THE PETITIONER BEFORE THE APPELLATE AUTHORITY DATED
29/08/2022
- Exhibit P5 TRUE COPY OF THE SHOW CAUSE NOTICE DATED 03/02/2022