

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 22875 of 2022**

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DEE CUBES DIAMONDS PVT. LTD.

Versus

STATE OF GUJARAT

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Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2

for the Respondent(s) No. 1

MS POOJA ASHAR, AGP for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 16/12/2022

ORAL ORDER

(PER : HONOURABLE MRS. JUSTICE MAUNA M. BHATT)

1. This petition under Article 226 of the Constitution of India is preferred with the prayer to quash and set aside the show-cause notice dated 26.05.2022, as also the order of cancellation of registration dated 11.10.2022.

2. The briefly stated facts:

2.1 The petitioners engaged in the business of trading in bullion, were duly registered under the provisions of Central/Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act"). It is case of the petitioners that sale and purchase of goods is their usual course of business and all their transactions were duly reflected in the returns filed. The taxes were duly paid as per the returns filed. All the transactions of the petitioners were duly supported by tax

invoices and all the payments were made through banking channels. A search proceeding was carried out by the Central GST Department at the premises of the petitioners on 08.12.2021. On the allegation of wrongful availment of Input Tax Credit (ITC) under the GST Act to avoid coercive action, the petitioners reversed ITC of Rs.90,00,000/- and further made payment of Rs.2,00,00,000/- through electronic cash ledger under protest to show their bonafides and also to avoid coercive actions.

2.2 It is further case of the petitioners that, however, Officers of the State GST Department visited the premises of the petitioner in May, 2022 for inquiry. The visit to premises was without prior intimation and at the relevant time only employees of the petitioners were present. Thereafter, respondent No.2 herein, who is a State GST Officer issued a show-cause notice on 26.05.2022 proposing to cancel the registration of the petitioners by alleging that the petitioners were engaged in issuing invoices. It is case of the petitioners that the said allegation was uncorroborated and without any supporting materials to form such basis. The petitioners responded to the said show-cause notice vide reply dated 02.07.2022. It was replied that the notice was completely vague and bereft of any reasons and without any supporting materials. It was also replied that they are not in a position to give any response to the notice unless and until they have been given some basis for issuing such notice. Thus, the request was made by the petitioners to drop the show-cause notice or to provide details, basis which the allegations were

made in the show-cause notice. The petitioners also gave another submission dated 08.09.2022 requesting to restore the registration and requested for personal hearing. However, no such request was acceded to and the respondent No.2 passed an order canceling the registration certificate of the petitioners on the ground which was never form part of the notice.

2.3 Aggrieved by the aforestated actions of the respondent, present petition is filed.

3. Heard learned advocate Mr. Uchit N. Sheth for the petitioners and learned Asst. Government Pleader Ms. Pooja Ashar for the respondents. Notice, in this case, has been issued vide order dated 17.11.2022, for final disposal. Affidavit-in-reply on behalf of respondent No.2 has been filed.

4. Appearing for the petitioners, learned advocate Mr. Uchit N. Sheth submitted that the order canceling registration certificate dated 11.10.2022, is beyond the scope of show-cause notice, arbitrary and in breach of principles of natural justice. He further submitted that the show-cause notice being non-speaking and being bereft of any reasons is illegal. The show-cause notice dated 26.05.2022 was so vague that it would not be possible for the petitioners to respond to the same as no supportive documents were provided despite sought for. Even the respondent No.2 - Authority had proceeded to pass the order canceling the registration certificate of the petitioners without providing any opportunity of hearing. The material based on which the allegations were

made in the show-cause notice were not provided to the petitioners. Therefore, also the initiation of the proceedings vide show-cause notice dated 26.05.2022 itself is illegal and not tenable in law. In support of his submission, he relied upon the decision of **Aggarwal Dyeing and Printing Works Vs. State of Gujarat & Ors.** in **SCA No.18860 of 2021** and submitted that as the show-cause notice is bereft of any reasons, the same is required to be quashed and set aside. The consequential order of cancellation of registration dated 11.10.2022, may also be quashed and set aside.

5. Appearing for the respondents, learned Asst. Government Pleader Ms. Pooja Ashar submitted that the show-cause notice dated 26.05.2022 was served calling for reply to show-cause on or before 03.06.2022, however, the petitioners filed reply to show-cause on 02.07.2022. The reply was filed without any supporting documents justifying the transactions as genuine and thereafter the order of cancellation of registration dated 26.05.2022 was passed. She thus submitted that the procedure contemplated under the provisions of the Act has been followed and there being no illegality, the petition deserves no interference.

6. Having heard learned advocates for the respective parties, it is noticed that, in the show-cause notice dated 26.05.2022, the reason for cancellation of registration reads as under:

"1. Issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful

availment or utilization of input tax credit or refund of tax.”

6.1 In the said show-cause notice, the petitioners were called upon to reply within seven working days from the date of service. Petitioners were also directed to appear before the Authority on 03.06.2022.

6.2 However, the order dated 11.10.2022, of cancellation of registration, reads as under:

“This has reference to your reply dated 05/06/2022 in response to the notice to show cause dated 26/05/2022

Whereas no reply to notice to show cause has been submitted;

The effective date of cancellation of your registration is 01/07/2017.”

7. Perusal of both these orders dated 26.05.2022 and 11.10.2022 show that no valid reason was given for cancellation of registration. Despite requested for, no details were provided and prima facie reply of the petitioners have not been considered. To our opinion, the show-cause notice dated 26.05.2022 does not specify the reason for which the allegation of wrongful availment or utilization of Input Tax Credit (ITC) or refund of tax is made. As the show-cause notice does not contain reason to justify the action of the respondent, it is violative of principles of natural justice. As held by this Court in **Aggarwal Dyeing (Supra)**, reasons are heart and

soul of the order and non-communication of the same itself amounts to denial of reasonable opportunity of hearing resulting into miscarriage of justice. Therefore, applying the same principle, as the show-cause notice dated 26.05.2022 is bereft of any reasons, the same deserves to be quashed and set aside and hereby quashed and set aside. The order of cancellation of registration dated 11.10.2022 is also quashed and set aside.

The registration of the petitioners is directed to be restored forthwith however, the respondents are given a liberty to issue fresh notice with particulars of reason incorporated with details and thereafter to provide reasonable opportunity of hearing and to pass appropriate speaking order on merits. It is needless to mention that it shall be open to petitioners to respond to such notice by filing objections reply with necessary documents, if relied upon. It is clarified that we have not gone into the merits of the matter. The petition stands *disposed of* with no order as to costs.

(SONIA GOKANI, J)

(MAUNA M. BHATT, J)

T. J. Bharwad