

**THE HON'BLE SRI JUSTICE SUJOY PAUL**  
**AND**  
**THE HON'BLE SRI JUSTICE N.TUKARAMJI**  
**WRIT PETITION No.8232 of 2024**

**ORDER:** *(per Hon'ble Sri Justice Sujoy Paul)*

Heard Sri Shaik Jeelani Basha representing Sri M. Venkatram Reddy, learned counsel for the petitioner, Sri Dominic Fernandes, learned Senior Standing counsel for CBIC, for respondent No.1 and Sri B. Mukherjee, learned counsel representing Sri G. Praveen Kumar, Deputy Solicitor General of India, for respondent No.2.

2. This petition is filed under Article 226 of the Constitution of India takes exception to the order for cancellation of registration in Form GST REG-19 dated 29.11.2023 and order of rejection of application for revocation of cancellation in GSTR REG-05 dated 23.02.2024.

3. Briefly stating, the relevant facts of the case are that the petitioner was served with a show cause notice dated 09.11.2023 for cancellation of registration, in the said notice itself it was mentioned that the registration of the petitioner stands suspended with effect

from 09.11.2023. The petitioner was directed to reply and appear in person for hearing at the appointed date. The said show cause notice was followed by the impugned order dated 29.11.2023, which cancelled the registration of the petitioner. Aggrieved, the petitioner preferred an application for revocation of cancellation of registration on 02.12.2023. The said application was rejected by order dated 23.02.2024.

4. Learned counsel for the petitioner submits that the show cause notice dated 09.11.2023 shows that the factual backdrop and alleged breach on the part of the petitioner is not spelled out. The whole show cause notice is reproduction of language of Section 29 (2) (e) of the Central Goods and Service Tax Act, 2017 (Act). Thus, the necessary ingredients to form a valid show cause notice were absent. The petitioner had no occasion to file any effective reply to such show cause notice. The entire proceedings of the cancellation of registration and rejection of application for revocation of registration are founded upon an invalid show cause notice dated 09.11.2023, since the principles of natural justice are grossly violated while issuing show cause notice dated 09.11.2023, the

subsequent orders, which are founded on such notice cannot sustain any judicial scrutiny.

5. Sri Dominic Fernandes, learned counsel for respondent No.1, supported the issuance of notice and orders and urged that the implied reading of the application dated 02.12.2023 shows that the petitioner was well aware of the factual basis.

6. No other parts are pressed by both sides.

7. We have heard and perused the entire record.

8. The show cause notice dated 09.11.2023 shows that the singular reason for taking action is that the registration is liable to be cancelled based on Section 29 (2) (e), which says that “registration is obtained by means of fraud, wilful misstatement or suppression of facts.”

9. We find subsistence in the argument of the learned counsel for the petitioner that the factual backdrop or the reason on the strength of which, conclusion of fraud or misstatement or suppression of facts was drawn is totally absent in the show cause notice. The show cause notice, in our considered opinion, should

spell out the factual backdrop of breach, on the strength of which the department has rejected and concluded that Section 29 (2) (e) of the Act, can be invoked. If minimum factual backdrop and nature of breach is not mentioned with accuracy and precision, the petitioner was not in a position to file reply.

10. The Apex Court expressed the need of issuance of such notice in **Canara Bank vs. Debasis Das**<sup>1</sup>, at para No.15, which reads as under:

“15. ... Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. ...”

11. In the **Rajesh Kumar vs. CIT**<sup>2</sup>, the Apex Court at para No.61, held as under:

61. ...The notice issued may only contain briefly the issues which the assessing officer thinks to be necessary. The reasons assigned therefor need not be detailed ones. But, that would not mean that the principles of justice are not required to be complied with. Only because certain consequences would ensue if the principles of natural justice are required to be complied

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<sup>1</sup> (2003) 4 SCC 557

<sup>2</sup> (2007) 2 SCC 181

with, the same by itself would not mean that the court would not insist on complying with the fundamental principles of law. ...”

12. This Court in **M/s. Sri Avanthika Sai Venkata vs. Deputy State Tax Officer<sup>3</sup>** and **M/s. S.B. Traders vs. The Superintendent<sup>4</sup>**, interfered with the impugned proceedings and order therein because the reasons were not mentioned while initiating proceedings against the petitioners therein.

13. Needless to mention that the show cause notice dated 09.11.2023 became the foundation for issuance of orders dated 29.11.2023 and 23.02.2024, since the foundation cannot sustain judicial scrutiny, the entire edifice of orders passed thereupon are liable to be jettisoned.

14. We do accordingly and set aside the show cause notice dated 09.11.2023, order dated 29.11.2023 and order dated 23.02.2024, since interference by us is for not following the principles of natural justice, the respondents can proceed against the petitioner from appropriate stage. However, since the impact of setting aside the show cause notice dated 09.11.2023 automatically restores the registration of the petitioner, it is made clear that if any Input Tax

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<sup>3</sup> W.P.No.1596 of 2024 decided on 23.01.2024.

<sup>4</sup> W.P.Nos.39498 and 39502 of 2022 decided on 28.10.2022.

Credit (ITC) remains unutilized, the petitioner shall not be permitted to utilize the same till the finalization of the show cause proceedings as directed above.

15. In the result, the present Writ Petition stands allowed to the above extent.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

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**SUJOY PAUL, J**

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**N.TUKARAMJI, J**

Date: 18.04.2024  
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