HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE THIRTIETH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION NO: 20080 OF 2024

Between:

M/s. Nice Enterprises, 19-4-347/5/C, kishan bagh, Hyderabad, Telangana, 500064. Represented by its Partner, Shri Mohd Waliuddin, S/o. Late Mohd Naseeruddin, Aged about 59 years, R/o. 11-4-266, Bazarghat Road, Bazar Ghat, Hyderabad, Telangana, 500004.

...PETITIONER

AND

1. The Deputy Commissioner (ST) STU-I, Charminar Circle, Charminar Division, Gaganvihar Building, Nampally, Hyderabad- 500 001.
2. Commissioner of State Tax, Saroor Nagar Division, Nampally, Hyderabad, Telangana - 500 001
3. State of Telangana, Through Principal Secretary to Government, Revenue Department (Commercial Tax), Hyderabad, Telangana

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order, or direction more particularly one in the nature of a Writ of Mandamus declaring the action of Respondent no. 1 in suspending the GST registration without a proper cause vide ref no ZA360524055743F in Form GST REG-17 dated 24.05.2024 as being void, arbitrary, illegal, without authority of law and without jurisdiction, violative of the principles of natural justice apart from being violative of Articles 14, 19(1)(g), 21 and 265 of the Constitution of India, and to consequently set aside the Show Cause Notice by revoking the suspension of GST registration of the Petitioner and pass such further or other

order(s) as this Honble Court may deem fit and proper in the circumstances of the case.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of notice issued vide ref no ZA360524055743F in Form GST REG-17 dated 24.05.2024 and consequently allow the petitioner to file their returns.

Counsel for the Petitioner: SRI MOHD MUKHAIRUDDIN

Counsel for the Respondents: SRI SWAROOP OORILLA, SPL GP FOR STATE TAX

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE SUJOY PAUL

AND

THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

WRIT PETITION No.20080 of 2024

ORDER *(per Hon'ble SP,J)*

Sri Mohd. Mukahairuddin, learned counsel, appears for the petitioner and Sri Swaroop Oorilla, learned Special Government Pleader for State Tax, appears for the respondents.

2. With the consent finally heard.

3. The show cause notice dated 24.05.2024 is subject matter of challenge in this petition which is called in question by learned counsel for the petitioner by advancing singular contention. He submits that the said notice does not contain necessary factual details and is only reproduction of Section 29(2)(e) of Central Goods and Services Tax Act, 2017(for short "the Act"). In absence thereof, the petitioner cannot file effective reply to the said notice and the said notice is no notice in the eyes of law worth the name. The petitioner's registration also stood suspended pursuant to the said cryptic notice. Thus, the said notice may be set aside.

4. Sri Swaroop Oorilla, learned Special Government Pleader for State Tax, supported the aforesaid impugned show cause notice but

fairly submitted that factual basis on the strength of which notice was issued is not disclosed.

5. We have heard the parties.

6. We have previously interfered with similar notices which were not pregnant with necessary factual details and descriptions. We find substance in the argument of learned counsel for the petitioner that such a notice runs contrary to principles of natural justice and deprives the assessee to file an effective reply to the show cause notice. In previous occasion, in W.P.No.17400 of 2024, this Court has held as under:

> "The singular reason assigned in the impugned notice dated 29.02.2024 reads asunder:
>
> > "1. Section 29(2)(e)-registration obtained by means of fraud willful misrepresentation or suppression of facts"
>
> Apart from this bald statement, there exists nothing in the show cause notice which can throw light as to what is the nature of 'fraud' or 'willful misrepresentation' or 'suppression of fact' by the petitioner. Thus, show cause notice is cryptic and an example of non application of mind. In absence of factual basis and necessary details, notice becomes vulnerable.
>
> 7. This Court, recently, considered this aspect in ***T S R Exports (supra)*** and held as under:
>
> > *"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 actual 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 [2003] 4 SCC 557, 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 [2006] 157 Taxman 168/287 ITR 91/[2007] 2 SCC 181, 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 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 Sri Avanthika Sai Venkata vs. Deputy State Tax Officer [2024] 159 taxmann.com 235/83 GSTL 311 (Telangana)/[W.P.No.1596 of 2024, dated 23-1-2024] and S.B. Traders vs. The Superintendent [2022] 145 taxmann.com 556/[2023] 96 GST 13/69GSTL 175 (Telangana)/[W.P.Nos.39498 and 39502 of 2022, dated 28-10-2022], 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".

(Emphasis Supplied)

8. Since the show-cause notice and suspension of registration is founded upon a cryptic notice dated 29.02.2024, both are set aside. On regular basis, we are painfully noticing this kind of notices, whereby, without assigning adequate reasons, the business of taxpayer is suddenly suspended. In absence of basic reasons available in the show-cause notice, the party aggrieved by it cannot even prefer an effective representation. We wonder how in

> such an insensitive and mechanical manner, the registrations are being suspended by issuing defective show-cause notices. Such orders certainly have an adverse impact on the livelihood of taxpayer and hits Article 21 of the Constitution. The authorities must remind themselves that the words 'LIFE' and 'FILE' contain same letters Every file has a nexus with somebody's 'life' or liberty. Thus, the authorities should sensitize themselves and should not pass order/notice in the mechanical manner it is passed in the present case. We hope and trust that, henceforth, the authorities will take care of this aspect. Learned counsel for the petitioner insisted for imposition of costs. Faced with this, Sri P.Sri Harsha, learned Assistant Government Pleader, submits that he will appraise the authorities about observation of this Court so that henceforth such mistakes do not occur. In view of this assurance, in the instant case, we are not imposing any costs on the respondents "

7. In view of aforesaid, the aforesaid impugned show cause notice is liable to be interfered with because it does not disclose minimum/elementary factual details on the basis of which power under Section 29 of the Act is invoked. Mere reproduction of offending clause or enabling provision cannot be a reason to give stamp of approval to a show cause notice which lacks minimum essential details.

8. Resultantly, the impugned show cause notice dated 24.05.2024 is set aside. Liberty is reserved to the respondents to proceed against the petitioner in accordance with law. Sri Swaroop Oorilla, learned Special Government Pleader for State Tax, assured the Court that this order will be brought to the notice of the concerned authorities and he will appraise them to eschew the practice of issuing such cryptic notice.

9. Accordingly, this Writ Petition is allowed. No costs.

Interlocutory applications, if any pending, shall also stand closed.

SD/- K. VENKAIAH
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Deputy Commissioner (ST) STU-I, Charminar Circle, Charminar Division, Gaganvihar Building, Nampally, Hyderabad- 500 001.
2. The Commissioner of State Tax, Saroor Nagar Division, Nampally, Hyderabad, Telangana - 500 001
3. The Principal Secretary to Government, Revenue Department (Commercial Tax), Hyderabad, Telangana
4. One CC to SRI MOHD MUKHAIRUDDIN, Advocate [OPUC]
5. Two CCs to SPL GP FOR STATE TAX, High Court for the State of Telangana at Hyderabad [OUT]
6. Two CD Copies

BSR
GJP

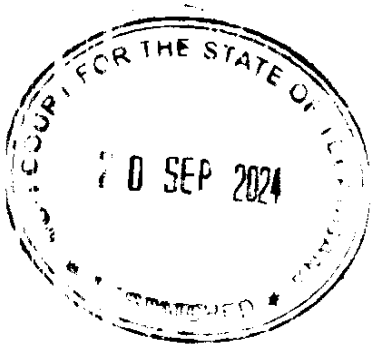
2024:TSHC:33965-DB

HIGH COURT

DATED: 30/07/2024

ORDER

WP.No.20080 of 2024



ALLOWING THE WRIT PETITION,

WITHOUT COSTS

(9) VLV
27/8/24