Suspension of Registration - Even if justice is not done it should appear to be done

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By Vijay Kumar

RULE 21A(2) of the CGST Rules reads as:

> (2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled underÂsection 29 Â or underÂrule 21,
> he may, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration underÂrule 22.

Prior to 22.12.2020, this read as

> 2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may, after affording the said person a reasonable opportunity of being heard
> suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.

The words, after affording the said person are as on able opportunity of being heard were deleted by Notification No. **94/2020-Central Tax** , dated 22nd December, 2020.

By law, the Government deleted the principles of natural justice. Nobody shall be condemned unheard became a little irksome for the government and they decided that silly principles like hearing and natural justice were a burden to the serious business of tax collection. In any case, they had already perfected the art of personal hearing to a funny farce. What is the use of giving you a hearing if I am anyway going to decide against you?

In a recent case before the Bombay High Court - **2022-TIOL-1166-HC-MUM-GST** , Petitioner was issued a show cause notice dated 8th August, 2022 for cancellation of Registration and in the notice itself, it was provided that "Please note that your registration stands suspended with effect from 08/08/2022".

The Petitioner submitted that:

> - this order has been issued in the show cause notice itself without affording any opportunity to the Petitioner of being heard.
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> - The original Sub-Rule (2) of Rule 21A of the Central Goods and Service Tax **Rules, 2017** (***"CGST Rules"***) provided that a party shall be given a reasonable opportunity of being heard before passing of a suspension order, which portion has been deleted by a Notification dated 22nd December, 2020.
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> - this goes against the principle of natural justice because implication of such a suspension is drastic. A registered person whose registration has been suspended cannot make any taxable supply during the period of suspension and shall not be granted any refund during the period of suspension.

- Therefore, Petitioner is challenging the omission of the words "after affording the said person a reasonable opportunity of being heard" in Sub-Rule (2) of Rule 21A of the CGST Rules, 2017.

The petitioner also prayed that:

(i) this Hon'ble Court may be pleased to stay the effect and operation of the impugned show cause notice dated 08.08.2022 vide which, the registration certificate of the petitioner under the GST Act has been suspended;

(ii) direct the Respondents to revoke the suspension of the Petitioner's GST registration immediately and restore the same.

The High Court issued notice to the Attorney General of India as well as the Advocate General of Maharashtra. Petition is to be listed on 10/10/2022 and in the meanwhile, there shall be ad-interim stay, as prayed for.

When this amendment was made CBIC had issued a clarification
"Myths v. Facts on CGST Notification issued on 22.12.2020 to curb GST Fake invoice frauds."

Myth: No opportunity of being heard will be given if proper officer believes that registration is liable to be cancelled.

FACT: The GST laws passed by the Parliament and state legislatures provide that GST registration is liable to be cancelled for those who have not filed 6 or more returns. It is therefore wrong to say that the cancellation will be done without reasons. To protect the interest of revenue, this provision has been put in the law so that fraudsters do not run way with GST collected from their customers.

It may be further noted that no cancellation of registration would be done without giving proper opportunity of hearing to the taxpayer. Immediate action for suspension is necessary in cases where unscrupulous operators seek to pass on huge fake credit by gaming the system. Such action will not affect genuine taxpayers and will provide them a level playing field. Moreover, suspension may be revoked by the officer based on the taxpayer's representation.

Fine, but can so much discretion be given to an officer that he can simply suspend a GST registration without hearing the offending taxpayer? And can the government through delegated legislation bury the principles of natural justice? When I was arguing a Section 50 interest case in a High Court, I submitted that the bank account of my client was attached without giving me a notice for interest; the Government Counsel argued that no notice was stipulated under Section 50. The High Court granted stay observing,
whether a notice was liable to be issued to the petitioner before attachment of his account requires examination."

In another Section 50 case, the Karnataka High Court - **2019-TIOL-1660-HC-KAR-GST** observed,

the issuance of Show Cause notice is ***sine qua non***
to proceed with the recovery of interest payable thereon under Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules. Undisputedly, the interest payable under Section 50 of the Act has been determined by the third respondent - Authority without issuing Show Cause Notice, which is in breach of principles of natural justice. It is trite law that any order passed by the quasi-judicial authorities in contravention of the principles of natural justice, cannot be sustained. Similarly, after determination of the interest liable to be paid by the petitioner, no notice has been issued before attaching the bank account of the petitioner. There is a lapse on the part of the third respondent - Authority. The notion of the third respondent - Authority that Section 75(12) of the Act empowers the authorities to proceed with recovery without issuing Show Cause Notice is only misconceived.

Whatever you write in your law, you simply can't do away with the inconvenience of following the principles of natural justice. Even if justice is not done it should appear to be done.

That reminds me of the origin of the famous saying
justice should not only be done, but should manifestly and undoubtedly be seen to be done
. This happened nearly a hundred years ago.

On August 22, 1923, a collision took place between a motor cycle driven by one Mr. McCarthy and a motor cycle and side-car driven by one Mr. Whit worth, and it was alleged that the latter and his wife sustained injuries in the collision. Messrs. Langham, Son & Douglas, solicitors,Â made a claim on behalf of Whit worth against McCarthy for damages.

In the criminal proceedings before a bench of judges in Sussex, the clerk to the justices, Mr. Langham, was also a partner of the law firm that was engaged to sue McCarthy for damages. As Mr. Langham was on a holiday, his younger brother acted as a deputy clerk on the day of the hearing. Incidentally, the younger brother was also a partner in this law firm.

After the hearing was over, the justices retired to their chamber to consider their decision and the deputy clerk also retired with them. After some time, the justices returned to court and declared McCarthy guilty, convicted him and imposed a fine of 10 shillings with costs.

McCarthy appealed to the King's Bench on the ground that it was improper for the deputy clerk to have retired with the justices before they delivered their verdict. He was a partner of the very law firm which was engaged to sue him for damages and it was improper for such a partner to also retire with the justices.

The King's Bench, presided over by Lord Hewart CJ observed,

> It is clear that the deputy clerk was a member of the firm of solicitors engaged in the conduct of the proceedings for damages against the applicant in respect of the same collision as that which gave rise to the charge that the justices were considering. It is said, and, no doubt, truly, that when the gentleman retired in the usual way with the justices, taking with him the notes of the evidence in case the justices might desire to consult him, the justices came to a conclusion without consulting him, and that he scrupulously abstained from referring to the case in any way.
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> But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.
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> Speaking for myself, I accept that statements contained in the justices' affidavit, but they show very clearly that the deputy clerk was connected with the case in a capacity which made it right that he should scrupulously abstain from referring to the matter in any way, although he retired with the justices; in other words, his one position was such that he could not, if he had been required to do so, discharge the duties which his other position involved. His twofold position was a manifest contradiction.
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> In those circumstances I am satisfied that this conviction must be quashed, unless it can be shown that the applicant or his solicitor was aware of the point that might be taken, refrained from taking it, and took his chance of an acquittal on the facts, and then, on a conviction being recorded, decided to take the point. On the facts I am satisfied that being no waiver of the irregularity, and, that being so, the rule must be made absolute and the conviction quashed.

And the concept that justice should not only be done, but should manifestly and undoubtedly be seen to be done
has perhaps become the most quoted legal maxim, GST and suspension of Registration notwithstanding.

Until Next week