

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.401/2021

OPC Assets Solutions Pvt. Ltd., having its Registered Office at Door No. 5, 7th Floor, ALSA Tower, No. 186/187, Poonamallee High Road, Kilpauk, Chennai-600010 & Corporate Office at Unit No. 202, A-Wing, 2nd floor, Natraj by Rustomjee, Sir M.V. Road, Western Express Highway, Andheri (East), Mumbai-400069 and present principal place of business at House No. 324389, Ward No. 32, Holding No. 386 Netaji Subhash Road Near HDFC bank Agartala Branch Post, Agartala-799001, having GSTIN. 16AAACO7555K1Z4, represented by its Authorized Signatory Mr. Rahul Tiwari (Manager-Accounts & Finance), S/o Ramashankar Tiwari, residing at Building No. 1B/I-305, Gokuldham Society, Adivali-Dhokali Talav Malang Road, Kalyan East, Near Namaskar Dhaba, Pisawaji (N.V.), Pisavli, Thane, Maharashtra-241306, camped at Room No.304, Hotel Polo Towers Agartala, VIP road, Kunjaban, Agartala, Tripura (W)-799006.

----Petitioner(s)

Versus

1. THE STATE OF TRIPURA Represented by the Principal Secretary, Finance Department- Government of Tripura, Civil Secretariat, New Capital Complex, P.O. Kunjaban, Agartala, West Tripura, PIN-799010.
2. THE CHIEF COMMISSIONER OF STATE TAX, Tripura Goods & Service Tax Department, O/o The Commissioner of Taxes and Excise, Government of Tripura, 3rd Floor, Khadya Bhavan, Pandit Nehru Complex, Gurkhabasti, Agartala, West Tripura-799006.
3. THE SUPERINTENDENT OF STATE TAX, Sales Tax Officer, Class II, Level-1, Charge-IV, Agartala, Tripura Good and Service Tax Department, Kar Bhavan, Palace Compound, Agartala, West Tripura, PIN:799001.

-----Respondent(s)

For Petitioner(s)	: Mr. B.L. Narsimhan, Advocate, Mr. T.K. Deb, Advocate, Mr. N. Pal, Advocate, Mr. R. Tangri, Advocate, Mr. V. Jain, Advocate.
-------------------	---

For Respondent(s)	: Mr. Debalay Bhattacharjee, G.A., Mr. K. De, Addl. G.A.
-------------------	---

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

Date of hearing : 17th August, 2021.
Date of judgment : 31st August, 2021.
Whether fit for reporting : NO.

JUDGMENT & ORDER

(Akil Kureshi, C.J.)

The petitioner has challenged an order dated 23.04.2021 passed by the Superintendent of Taxes, Charge-IV, Tripura cancelling the petitioner's registration under Tripura Goods and Services Tax Act as well as Central Goods and Services Tax Act.

2. Brief facts are as under:

The petitioner is a company registered under the Companies Act and is engaged in the business of providing goods on rental basis to its customers across the country including in the State of Tripura. In the State of Tripura the petitioner commenced its business in the year 2013-14. The petitioner was granted registration under CGST as well as State GST Acts. According to the petitioner whenever demand for any capital goods or machinery is received by the petitioner, the petitioner enters into a rental agreement with the customer and in terms and conditions thereof the petitioner would rent goods to the customer. The petitioner had purchased

goods from M/S Reliance Retail Limited, Tripura (RRL, for short) for renting it back to RRL. According to the petitioner, the petitioner had obtained premises from one Rinku Dey on lease for its business purpose and for registration. Such lease was renewed from time to time. However, subsequently the petitioner was required to take new premises on lease. On 06.09.2020 the petitioner received a notice from the State GST Department. According to the petitioner, the petitioner had satisfied the queries raised in such communication under its letter dated 16.01.2021.

3. On 06.12.2020 the petitioner received a show-cause notice from the Superintendent of Taxes why the petitioner's registration should not be cancelled. This notice reads as under:

“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 Non compliance of any specified provisions in the GST Act or the Rules made thereunder as may be prescribed

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.

You are hereby directed to appear before the undersigned on 15/12/2020 at 11:25

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date

and time, the case will be decided ex parte on the basis of available records and on merits.

Please note that your registration stands suspended with effect from 06/12/2020.” (emphasis supplied by us)

4. The petitioner replied to the said show-cause notice dated 06.12.2020 under a letter dated 16.01.2021 and stated as under:

“Respected Sir,

The above named Taxpayer acknowledges the receipt of SCN dated 06/12/2020 for cancellation of registration on the matter of non compliance of any specified provision in GST.

That it is pertinent to mention herein that the taxpayer is regular in paying their taxes and regular in filing their returns on time.

That it can be understood that matter of non-compliance is in connection with SCN u/s 61 of GST Act dated 06.09.2020 in the matter of clarification of excess ITC claimed as appeared in the differences in the GSTR3B and GSTR2A for the period Apr-2018 to Mar-19.

That, the matter relating to the same is being handled by Shri Nanda Dulal Pal, Advocate, Shri Nirnoy Paul, Advocate and Mr. Ninnaz Paul and a written submission in connection with the same along with additional supporting documents has been submitted today vide ASMT 11 bearing ARN No.ZD1601210003021 dated 16.01.2021.

That, the taxpayer assures full co-operation with the department and its procedures and that a written Compliance in Ref to SCN dated 06.09.2020 has been submitted and thus hereby pray before you to kindly revoke the SCN for cancellation of registration and allow taxpayer to run its course of business smoothly and file their returns on time and deposit applicable taxes and hope that your honour would be pleased to allow the same and drop the proceedings from your end otherwise the taxpayer would suffer and irreparable loss and oblige thereby.

And for this act of kindness the taxpayer as in duty bound shall ever pray.

Yours Faithfully

For, **OPC Asset Solutions Private Limited.**”

5. On 18.01.2021 the Superintendent of Taxes conveyed to the petitioner that it was decided to undertake audit of the petitioner's books of accounts and records for the period between July, 2017 to March, 2018. Petitioner replied to the said notice under a letter dated 28.01.2021 and explained its business model in detail. On 05.01.2021 the petitioner wrote to the Superintendent of Taxes and requested him to withdraw the suspension of the petitioner's registration.

6. On 23.04.2021 the Superintendent of Taxes passed the impugned order and cancelled the petitioner's registration effective from 01.07.2017. Consequently, he also computed certain amounts the petitioner

would have to pay by way of Central and State GST as well as IGST. This order the petitioner has challenged in the present petition.

7. In this order [at Annexure-P/21] the Superintendent of Taxes had stated as under:

“1. The ground of cancellation order passed in a separate sheet and will sent via registered e mail.”

8. Accordingly, he supplied to the petitioner a detailed order dated 23.04.2021. In the preamble of the order the said authority has referred to the show-cause notice dated 06.12.2020 (for cancellation of registration) and the petitioner's reply to such notice dated 16.01.2021. On this basis we believe these are purported grounds in support of the cancellation of registration of the petitioner though this order eventually seeks recovery of certain taxes with penalty which was not part of the show-cause notice dated 06.12.2020.

9. We have reproduced the entire show-cause notice dated 06.12.2020 calling upon the petitioner to state why the registration should not be cancelled. The ground on which such registration was liable to be cancelled according to the Superintendent was **“non-compliance of any specified provisions in GST Act or the Rules made thereunder as may**

be prescribed”. Very clearly the Superintendent has picked up this notice from the printed proforma prescribed under the rules which obviously has a reference to non-compliance of any of the provisions of the GST Act or the Rules made thereunder. Which provisions of the GST Act or the Rules were not complied and non-compliance of which was likely to result into cancellation of registration of the petitioner was not specified in the notice at all. This show-cause notice, therefore, did not make the petitioner wiser about the grounds on which the Superintendent of Taxes proposed to cancel the petitioner’s registration. The entire purpose of issuance of show-cause notice frustrated because the Superintendent of Taxes merely forwarded a printed blank format of a show-cause notice to the petitioner asking the petitioner to meet with non-existent and non-disclosed grounds. The very purpose of issuance of show-cause notice is to elicit a proper response from the noticee so that on fair assessment of the materials on record after considering the representation of the noticee the competent authority can come to a just conclusion whether the noticee had exposed itself to the liability of cancellation of the registration. If such a show-cause notice does not specify the grounds on the basis of which the Superintendent desired to proceed further, the same would fail the test of minimum requirement of principles of natural justice and the statutory requirement for issuance of show-cause notice. Issuance of a show-cause notice is not an empty

formality to be performed without providing necessary details. In absence of indication of grounds on which the registration of the petitioner was liable to be cancelled or the alleged breaches committed by the petitioner which was likely to lead to the cancellation of the registration, the action of the Superintendent of Taxes failed the minimum requirement of natural justice.

10. Learned counsel for the petitioner correctly pointed out that in somewhat similar circumstances in a judgment dated 22.02.2021 in **WP(C) No.89 of 2021** [*Dayamay Enterprise vrs. State of Tripura and 3 others*] Division Bench of this Court had made following observations:

“Whatever be the tax demand of the department against the petitioner, the action under challenge cannot survive the test of law. The impugned notice has been issued only for cancellation of registration, that too without citing any particular reason. The reason stated is picked up from the statute itself namely, non-compliance of any specified provisions of GST Act or the Rules made thereunder. Without specifying which provisions of the Act or the Rules and in what manner the petitioner has approached, granting hearing to the petitioner would be an empty formality. This apart, admittedly, so far no order cancelling the petitioner’s GST registration has been passed. If that be so, without resorting to the power of suspending the registration, if there is any, the respondent surely cannot block the petitioner’s GST account on the official portal. Any such action would prevent the petitioner from carrying on his business in lawful manner.

Such an action would have the effect of suspension of the petitioner's registration."

11. Even the grounds stated in the supporting order are totally unacceptable. The Superintendent has passed a rather long order, going into range of legal issues not related to the case on hand. He had passed a similar order raising tax demands against the petitioner which is challenged by the petitioner in WP(C) No.399/2021 in which while quashing the order we have made following observations:

"7. Even otherwise the impugned order cannot sustain. The Superintendent of Taxes has passed an order which runs into close to 150 pages in which he has discussed range of issues completely unconnected to the case on hand. He has referred to the requirement for passing Board resolutions and circulations as flowing from the Company Law. He has discussed the issue of authorisation as referred to in the GST regime. He has entered into the arena of what are the requirements of a valid affidavit, who should sign such affidavit, who should notarise it and who should be the witnesses. He has referred to Section 195 of IPC which provides for punishment for false evidence. He has referred to the concepts of power of attorney and Negotiable Instruments Act. He has discussed a law on Transfer of Property and the essentials of a lease. He has spoken on the remedies available with the lessor. He has also taken note of different kinds of leases. He has reproduced literature from books and presumably from internet. He has extensively reproduced

from judgments of various Courts discussing constitutional principles. All these references are without showing relevance to the issues at hand. The ultimate observations and conclusions in the order are hard to find and more difficult to understand. The task of the reader of this order to fish out the reasons in support of the demand is more difficult than finding a needle from a haystack. Howsoever hard we may try, it is difficult to separate the grain from the chaff.

8. The order passed by the Superintendent and the approach that he has adopted is totally unsatisfactory. To begin with, the order reads more like a thesis in several fields of law in which he has tried to exhibit his half-baked, incomplete and internet acquired knowledge, in the process completely losing sight of the focal issue. He has made his order needlessly verbose, in the process not deciding the vital issues at all. More importantly he has referred to materials, documents and judgments and there is no evidence that he ever shared the same with the petitioner before relying upon them. In the age of internet and availability of information through technology, the Superintendent of Taxes was not precluded from doing his own homework and finding out material which was useful for the purpose of the case that he was deciding. However, any use of such material must precede sharing of it with the person likely to be adversely affected by his order. The basic requirement of principle of natural justice for sharing adverse material before utilising the same against a person must be observed with greater rigour in the times of availability of information on internet, all of which need not necessarily be accurate at all times. Accurate

or otherwise the noticee must have a chance to meet with such adverse material before it is used against him. For each individual reason namely the order being unintelligible, the action failing the test of principles of natural justice and the Superintendent of Taxes exceeding the show-cause notice, the impugned orders must be set aside. For sheer verbosity the orders must go. The same are accordingly set aside. Nothing stated in this order would prevent the Superintendent of Taxes from proceeding against the petitioner afresh for framing proper assessment if so advised and permitted under law.”

12. In the result, impugned order dated 23.04.2021 of cancellation of the petitioner’s registration is set aside. Consequently, the demand confirmed under order dated 23.04.2021 on the ground that the petitioner’s registration has been cancelled is set aside. Nothing stated in this judgment will prevent the Superintendent of Taxes from issuing a fresh show-cause notice for cancellation of registration of the petitioner and proceeding further thereafter in accordance with law.

13. Petition allowed and disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J

(AKIL KURESHI), CJ