

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.17591 OF 2022

Sheetal Dilip Jain

... Petitioner

Vs.

The State of Maharashtra & Ors.

... Respondents

Mr. Rahul C. Thakar i/by Mr. C. B. Thakar for Petitioner.

Ms. Jyoti Chavan, AGP a/w Mr. Himanshu Takke, AGP for Respondent-State.

Ms. Anagha Prashant Kand, State Tax Officer (C-812), (Girgaon-705), Nodal-II, Mumbai present.

**CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.**

DATED : 20th SEPTEMBER 2022

PC. :

1. One of the primary grievance raised in the Petition, in which an order dated 10th March 2022 is impugned, is that when a notice under Section 73 of the Maharashtra Goods and Services Tax Act, 2017 is issued, minimum 15 days time to reply should be given.

2. Ms. Chavan, in fairness, states that the period of 7 days given in the notice dated 2nd March 2022 to respond by 9th March 2022, issued to Petitioner is contrary to what the MGST Rules, 2017 prescribes. According to Ms. Chavan, minimum 15 days should have been given. Mr.

Thakar states that no time is prescribed, but since under Sections 73(8) of MGST Act, a period of 30 days of issue of show-cause notice is given to a person chargeable with tax under sub-section (1) or sub-section (3) of Section 73 to pay the amount, the show-cause notice should provide minimum 30 days to file a reply.

3. We are in agreement with Mr. Thakar because Sections 73(8) of MGST Act in terms permits a person chargeable with tax under sub-section (1) or sub-section (3) a period of 30 days from issuance of the show-cause notice to make payment of such tax along with interest payable under Section 50. If he does not wish to make payment, then within the 30 day period he could file a reply to the show-cause notice. This statutory period cannot be arbitrarily reduced to 7 days by assessing officer. In our view, this is also understanding of the Department because in the impugned order itself in Paragraph 1 it is stated as under :-

“A show cause notice/statement referred to above was issued to you u/s 73 of the Act for reasons stated therein. Since, no payment has been made within 30 days of the issue of the notice by you; therefore, on the basis of documents available with the department and information furnished by you, if any, demand is created for the reasons and other details attached in annexure.”

(Emphasis supplied)

4. On instructions from the officer concerned, Ms. Chavan, in fairness, states that the order is erroneous because in the show-cause notice only 7 days was given to reply to the notice and on the 8th day the impugned order came to be passed. Therefore, the question of not paying within 30 days of the issue of the notice will not arise. Hence, Ms. Chavan has instructions to withdraw the impugned order dated 10th March 2022. Ordered accordingly.

5. We are constrained to note that such orders without application of mind are being passed contrary to the basic provisions of the Act and the Rules framed thereunder. These acts/omissions of Respondents' officers is adding to the already overburdened dockets of the Court. Valuable judicial time is wasted because such unacceptable orders are being passed by Respondents' officers. The officers do not seem to understand or appreciate the hardship that is caused to the general public. In this case, Petitioner could afford (we have assumed) to spend on a lawyer and approach this Court but for every Petitioner, we would hazard a guess, atleast ten would not be able to afford a lawyer and approach the Court and their registrations may get cancelled by the very same officers who have passed such patently illegal orders.

6. In this case, in our view, it will only be fit and proper that Respondents are saddled with costs. Respondents shall pay a sum of Rs.10,000/- as donation to PM Cares Fund and this amount shall be paid within two weeks from the date this order is uploaded. The account details are as under :-

Name of the Account : PM CARES
Account Number : 60355358964
IFSC : MAHB0001160
Branch : UPSC - New Delhi

7. A copy of this order shall be forwarded to the CBIC and to the Chief Commissioner of State Tax, Maharashtra, so that they could at least hold some kind of training and/or orientation session/course, etc. to apprise and educate its officers on the prevailing law and rules framed thereunder and also explain to them what 'principles of natural justice' mean. This would in fact be in the interest of the Authorities, because this would then ensure that otherwise meritorious cases are not defeated on technicalities. It is also necessary that the authorities must be mindful of the grave prejudice that is caused to the assesseees on account of such patently illegal orders. Authorities must be

sensitive to this fact and the impact and consequences that their orders have on the public.

8. We would hasten to clarify that the observations above should not be taken as observations personally against the officer concerned, but have been only made keeping in mind the larger picture and the problems that the citizens of this country have to face. If only the officers are efficient and accountable, the Government's vision of ease of doing business in India may fructify.

9. Petition disposed.

(A.S. DOCTOR, J.)

(K.R. SHRIRAM, J.)