

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19176 of 2021

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VAGEESH UMESH JAISWAL
Versus
STATE OF GUJARAT

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Appearance:

KUNTAL A PARIKH(7757) for the Petitioner(s) No. 1

MR. UTKARSH SHARMA, LD. ASST. GOVERNMENT PLEADER/PP(99) for
the Respondent(s) No. 1

NOTICE NOT RECD BACK(3) for the Respondent(s) No. 2

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 06/01/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs;

“(a) That this Hon’ble Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the impugned order dated 15.11.2021 (Annexure-A) passed by the Respondent No.2 and

(b) That this Hon’ble Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the notice dated 11.10.2021 (Annexure-E) issued by the Respondent No.2, and

(c) That this Hon’ble Court be pleased to issue a

Writ of mandamus or any other appropriate writ, direction or order quashing and setting aside the action of blocking of input tax credit (Annexure-B) by the Respondents; and

(d) This Hon'ble Court be pleased to issue writ of mandamus or any other appropriate writ, direction or order directing the Respondents to unblock/release the input tax credit, and

(e) Pending notice, admission and final disposal of this petition, this Hon'ble Court by way of interim relief be pleased to direct the respondent authorities to restore the registration of the petitioner with effect from 01.07.2017 and to unblock/release the input tax credit of Rs.32,75,288/-; and

(f) Pending notice, admission and final disposal of this petition, this Hon'ble Court by way of interim relief stay the recovery and any other coercive action in pursuance of the impugned order dated 15.11.2021 (Annexure-A) passed by the Respondent No.2; and

(g) Ex-parte ad-interim relief in terms of Prayer-9(e) and 9(f) be granted; and

(h) for costs; and

(I) That this Hon'ble Court be pleased to grant such other and further relief/s as are deemed just and proper in the facts and circumstances of this case."

2. The facts, giving rise to this writ application, may be summarized as under;

2.1 The writ applicant is a proprietor of a proprietary firm running in the name of M/s. All Metals and is engaged in the business of trading of aluminum round bars, steel

tubes, pipes etc. The proprietary firm is registered under the Gujarat Value Added Tax Act, 2003. On 17th March, 2021, the premises of the writ applicant was searched by the Asst. Commissioner of DGGI (Directorate General of Goods & Services Tax Intelligence), Ahmedabad. In the course of the search, the officer seized various documents like purchase invoices, ledger copies etc. It appears that, thereafter, the respondent No.2 issued a show-cause notice in the Form GSTREG-17/31 [Rule 22(1)] of the Rules, which reads thus;

“Reference Number:ZA241021046852Z

Date:11.10.2021

*To,
Registration Number (GSTIN/Unique
ID):24AHZPJ6810B/ZD
Vageesh Jaiswal
B-2, Puspak Estate, Gujarat Bottling Road, Rakhial,
Ahmedabad, Gujarat, 380023.*

Show cause notice for Cancellation of Registration

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. Issue any invoice or bill without supply of goods and/or service in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax.

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 18.10.2021 at 11:00

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 11.10.2021.

*Place: Gujarat
Date: 11.10.2021.*

*Nanjibhai Keshabhai Prajapati
Commercial Tax Officer
Ghatak 19 (Ahmedabad): Range-5,
Division-2:Gujarat"*

2.2 To the aforesaid show-cause notice, the writ applicant filed its reply dated 18th October, 2021, which reads thus;

*"To,
Commercial Tax Officer,
Ghatak 19 (Ahmedabad): Range-5: Division-2 Gujarat*

Respected Sir,

Subject: Reply to Show Cause Notice for Cancellation of Registration in case of ALL Metals (Proprietor: VAGEESH JAISWAL), GSTN :24AHZPJ6810BIZD

Ref: Notice Reference Number: ZA241021046852Z dated 11-10-2021

As per the notice issued to us having following reason for the cancellation

“Issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax.”

We have been doing the business of supplying the steel on actual delivery terms only and we have not been involved in the issuance of any invoice or bill without supply of goods and or service. We need additional time of 10 days to submit the documentary evidence for delivery of goods since I was in Mumbai due to medical emergency of my sister (Attached herewith report of medical) and then traveled to Kolkata and returned to Ahmadabad as on 17-10-2021 at late night evening (Attached herewith travel tickets).

At outset I also mention the fact that my total credit of Rs. 32,75,288/- was already blocked for which no order was received to me for blocking the credit for the F.Y 2018-19.

I urge to share with me show cause notice has been issued based on which supplier name and GSTN who involved in Issues any invoice or bill without supply of goods and/or services, if any or base for issuing this show cause notice so that I can substantiate the reply in detailed and also, notice was issued for which period to substantiate the claim of proof of delivery of goods by sales made by us.

I also urge that my number has been suspended without providing the base and information pertaining to which year hence; I request to activate my number as suspension of the number leads to hardship for deliver the goods as on date and affecting to my business transaction.

We shall be glad to furnish further information or explanation, if any.

For,

All Metals

Vageesh Jaiswal,

(Proprietor)

Enclosure:-

01. Medical report of my sister;

02. My travel tickets from Ahmedabad to Mumbai with my spouse and Travel ticket from Mumbai to Kolkata and Kolkata to Ahmedabad."

2.3 In the reply to the show-cause notice, the writ applicant brought to the notice of the Commercial Tax Officer that the show-cause notice was as vague as anything as no details of the name of the supplier etc. had been furnished.

2.4 The Commercial Tax Officer proceeded to pass the final order, cancelling the registration in the form GSTREG-19 dated 15th November, 2021. The same reads thus;

***"FORM GST REG-19
[See Rule 22(3)]***

Reference Number:ZA241121046467U

To,

Vageesh Jaiswal,

*B-2, Puspak Estate, Gujarat Bottling Road, Rakhial,
Ahmedabad, Gujarat, 380023.*

GSTIN/UIN:24AHZPJ6810BIZD

Application Reference No.(ARN):AA241021032559M

Order for Cancellation of Registration

This has reference to your reply dated 18.10.2021 in response to the notice to show cause dated 11.10.2021

Whereas the undersigned has examined your reply and submission made at the time of hearing and is of the opinion that your registration is liable to be cancelled for following reason(s);

1. DEALER IS ENGAGED IN BOGUS BILLING

The effective date of cancellation of your registration is 01.07.2017

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and basis thereof is as follows;

The amount determined as being payable above are without prejudice to any amount that may be found to be payable you on submission of final return furnished by you.

You are required to pay the following amount on or before 25.11.2021 failing which the amount will be recovered in accordance with the provisions of the Act and Rules made thereunder.

Head	Central Tax	State Tax/UT Tax	Integrated Tax	Cess
Tax	0	0	0	0
Interest	0	0	0	0
Penalty	42923063	42923063	822183	0

Others	0	0	0	0
Total	42923063E 7	42923063E7	822183,0	0.0

*Place: Gujarat
Date: 15.11.2021*

*Nanjibhai Keshabhai Prajapati
Commercial Tax Officer
Ghatak 19 (Ahmedabad)"*

2.5 The plain reading of the order, cancelling the Registration, would further indicate that there is a demand of Rs.8 Crore & Odd.

2.6 Being dissatisfied with the aforesaid order passed by the Commercial Tax Officer, cancelling the Registration, the writ applicant is here before this Court with the present writ application.

3. We have heard Mr. Mihir Joshi, the leaned senior counsel assisted by Mr. Kuntal Parikh, the learned counsel appearing for the writ applicant and Mr. Utkarsh Sharma, the learned AGP appearing for the State-respondents.

4. This litigation has really disappointed us and that too at the end of a tiring day. We are disappointed for two reasons; first the mode and manner in which the entire exercise has been undertaken by the Commercial Tax Officer in cancelling the registration and secondly the

vehemence with which the learned AGP has opposed this writ application despite serious shortcomings in the impugned action. When we pointed out to the learned AGP that the show-cause notice is as vague as anything, the learned AGP very vehemently maintained that the show-cause notice contains the minutest of the details on the basis of which the writ applicant could have given a proper and effective reply. The first thing we take notice of is that there are no reasons assigned in the show-cause notice. What has been done is mere incorporation of the provisions of Rule 21(b) of the Rules. If that is to be termed as reasons, then we are really left wondering as to how do we adjudicate such matters. In the final order, cancelling the registration, there is just one line stated "Dealer is engaged in bogus billing".

5. We inquired with the learned AGP that if such a show-cause notice would have been issued to him, how he would have replied in the absence of any basic information or details. Mr. Sharma submitted that the show-cause notice is in the proforma, i.e, Form GSTREG-17/31. In the show-cause notice, it has been brought to the notice of the writ applicant that he is engaged in bogus billing and that is sufficient for the writ applicant to understand what the authority is talking about.

6. We are sorry to say that the Commercial Tax Officer has not only cut a sorry figure for himself but has also

made a mockery of justice. He has also made a mockery of the provisions of law. If such is the understanding of the Commercial Tax Officer, then he does not deserve to remain in office even for a day. We are constrained to use some harsh words because this is a common feature. Everyday we come across matters of the present type and the officers are not ready to understand.

7. The whole object of issuing a show-cause notice is to make the recipient of the notice understand what the authority is trying to convey and what are the nature of the allegations. In the case on hand, when there are allegations of bogus billing, it was expected of the authority to at least furnish some information about such bogus billing. At this stage, Mr. Sharma submitted that along with the show-cause notice, there is always few documents attached which would indicate what the authority wants to convey about the bogus billing. It has been stated on oath not only in the memorandum of the writ application but even in the reply to the show-cause notice that except the show-cause notice, nothing else was furnished or nothing was attached to such show-cause notice.

8. A show cause notice has great significance in the adjudication proceedings for the mandatory compliance of the principles of natural justice . Show cause notice is a mandatory requirement for raising any demand under the

Act, 2017 except payment of interest u/s 50 and assessment of non filer of returns u/s 62 of the act. The SCN is the foundation on which the adjudicating authority has to build up its case. It is the document served on the taxable person asking him to explain with reason as to why a particular course of action should not be taken against him. It must be a speaking and well reasoned document. The issue of SCN is not only to make aware the taxable person against whom the action is intended to be taken but must contain brief facts of case and grounds relied upon for the proposed action and language in precision, the reading of which makes the person concerned understand the case that he has to defend. It should not be issued on assumptions and presumptions. The allegations and findings in the SCN should be supported by some documentary evidences.

9. The Supreme Court, in the case of **Commissioner of C.Ex., Bangalore vs. Brindavan Beverages (P) Ltd.**, Civil Appeal Nos. 3417-3425 of 2002 decided on 15.06.2007, has observed as under;

“The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various

concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any."

10. At this stage Mr. Joshi pointed out that the input tax credit was also blocked in exercise of the powers under Rule 86A of the Rules. Let us assume for the moment that at the relevant point of time, the authority was justified, but the order has outlived its statutory life period of one year. In such circumstances, the blocking of the input tax credit also comes to an end.

11. In the result, this writ application succeeds and is hereby allowed. The impugned order, cancelling the registration is hereby quashed and set aside. As we have quashed and set aside the order, cancelling the registration on the ground of vague show-cause notice bereft of any material particulars, we leave it open to the authority to issue a fresh show-cause notice, if it intends to, but such fresh show-cause notice should contain all the necessary details and information about the alleged bogus billing to enable the assessee to file an effective reply to the same.



(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)