

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 2542 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 14832 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 14751 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 14852 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 16092 of 2021  
With  
R/SPECIAL CIVIL APPLICATION NO. 12661 of 2019  
With  
R/SPECIAL CIVIL APPLICATION NO. 2541 of 2021**

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**GYSKOAL ALLOYS LTD. & ORS.  
Versus  
UNION OF INDIA & ANR.**

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Appearance:

MR HEMANT G. DHARMADHIKARI, ADVOCATE assisted by  
MS LALITA S. PHADKE & MR DHAVAL SHAH, ADVOCATES for the  
Petitioners

NOTICE SERVED BY DS for the Respondent No. 1

MR DHAVAL D VYAS(3225) for the Respondent No. 2

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**CORAM: HONOURABLE THE CHIEF JUSTICE (DESIGNATE) MS.  
JUSTICE SONIA GOKANI  
and  
HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

**Date : 15/02/2023**

**ORAL ORDER  
(PER : HONOURABLE THE CHIEF JUSTICE (DESIGNATE) MS. JUSTICE  
SONIA GOKANI)**

1. The petitioners are before this Court challenging

the ex-parte Order-in-Original No. AHM-EXCUS-003-COM-027-28.02.2021 dated 04.09.2020 passed by the Commissioner Central GST and Central Excise, Gandhinagar Commissionerate, Ahmedabad allegedly in gross violation of principles of natural justice without hearing the petitioners or its authorized representatives.

2. The brief facts leading to the present petition are as follows:

2.1 One of the petitioners - M/s Gyscoal Limited, is a company incorporated under Companies Act., for manufacture their final goods i.e. products of stainless Steel falling under Ch. 72 of CETA, the other petitioner i.e. Viral Shah is the Director of Gyscoal Ltd, Mr. Prakashsingh Solanki is the employee of Gyscoal Limited and Rest Petitioners i.e. Tvisha, Magna Vision and Superfine are the suppliers of raw material to the Gyscoal Ltd.

2.2 As averred by the petitioner - Gyscoal Ltd that, the officers of the Central Excise Department carried out the search in the premises of M/s. Gyscoal Limited and withdrew their record under the panchanama. As regards other petitioners, their statements are recorded. The suspicion on the part of the Excise Officers is that M/s.Gyscoal Limited

only received the central excise invoices without supply of goods mentioned therein and other petitioners viz., Magna Vision, M/s.Twisha and Superfine have only supplied the invoices and not the goods. Therefore, M/s Gyscoal Limited has availed Cenvat Credit of excise duty without receipt of goods mentioned in the invoices. The allegation against M/s. Twisha, Superfine, and Magna Vision is that they abated with M/s.Gyscoal Ltd., to facilitate M/s. Gyscoal to avail ineligible cenvat credit.

2.3 The entire Show Cause Notice is based on the Statements recorded under Section 14 of Central Excise Act and the impugned order has confirmed the demand qua M/s.Gyscoal Limited on the basis of those statements which are not subjected to cross examination.

2.4 Further, looking to the date chart that the opportunity of personal hearing was only granted during nationwide lockdown. Copy of the said date chart are attached herewith.

2.5 A copy of show cause notice was provided without relied upon documents which were submitted upon the request by petitioner/s. Subsequently, the hearing was granted on 27.01.2020, 10.03.2020 (public holiday), 19.03.2020,

17.04.2020, 05.08.2020, 11.08.2020, 20.08.2020, which were physical hearing and during nationwide lockdown. The petitioners have replied their show cause notices prior to 11.08.2020. They have filed application for cross examination which are received by the respondent as per their affidavit in reply.

2.6 Except main noticee - M/s Gyscoal Alloys Ltd., an opportunity of hearing was not granted on 20.08.2020, whereas main noticees, as per the record of hearing in impugned order, was heard. Further, main noticee has drawn attention to the fact on record that on 20.08.2020, actual hearing that took place was regarding only one show cause notice dated 28.07.2016 i.e. proposing seizure, confiscation and penalty and as regards show-cause notice dated 02.04.2018, advocate for the main noticee / petitioner i.e. M/s.Gyscoal Alloys Ltd. has submitted written submissions in respect of application for cross-examination and requested for hearing of the application for cross-examination. The said fact is admitted in para 38.2 of the impugned order. It has been further stated that the final hearing of show-cause notice dated 02.04.2018 did not take place and record of hearing giving reference to only final hearing of show cause notice dated 02.04.2018 was reverted for correction by the advocate of the petitioner, wherein it is stated that hearing took place

of only one show cause notice dated 28.07.2016 which has been clearly mentioned. The impugned order has not referred to the said email for correction of record of hearing.

2.7 It has been further contented that in case of all the petitioners, reply to show cause notice filed by the petitioner/s has not been recorded properly and in case of petitioner, *the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.*"

2.8 In the above premise the petitioners have sought

following prayers:

“(A) That Your Lordships may be pleased call for records and proceedings from Respondent No. 2, The Commissioner of CGST and Central Excise, Gandhinagar Commissionerate at Ahmedabad to verify the noting of directions on the file;

(B) That Your Lordships may be pleased to issue a Writ of Mandamus or a Writ of Certiorari or any other appropriate writ, direction or order, quashing and setting aside the decision of the Respondent no. 2 conveyed vide Order-In-Original no. AHMEXCUS-003-COM-027-28-20-21 dated 04/09/2020 (Annexure-"A"), and be further pleased to direct Respondent no. 2, to allow the Petitioners to cross examine the persons whose statements are relied upon in the Show Cause Notice;

(C) Your Lordship may be pleased to set aside the impugned Order in Original No. AHM-EXCUS-003-COM-027-28-20-21 dated 04/09/2020 direct de-novo adjudication by any other Commissioner or officer of rank equivalent to or upper to the rank than the rank of Respondent no. 2 and thereby transfer the matter for re-adjudication from Respondent no. 2;

(D) Pending the hearing and final disposal of the present petition, Your Lordships may be pleased to restrain the Commissioner of CGST & Central Excise, Ahmedabad, the 2nd Respondent herein, from initiating recovery proceeding based on impugned Order In Original. No. AHM-EXCUS-003-COM-027-28-20- 21 dated 04/09/2020 (Annexure-A);

(E) An ex-parte ad-interim relief in terms of prayer (D) above may kindly be granted;

(F) Any other further relief as may be deemed fit in the facts and circumstances of the case may also please be granted.”

3. Two issues that require consideration are non-availment of an opportunity of cross-examination of the witnesses and also non-grant of personal hearing as provided under the statute.

4. This Court also, at the time of issuance of notice, had referred to not granting of cross examination and pointed out that such action is violative of principles of natural justice. After hearing of petitioners, it is found that effective personal hearing was also not granted and therefore there is a complete denial of natural justice.

5. Record of personal hearing : The adjudicating authority must maintain a record of personal hearing and written submission made during the personal hearing. Evidence of personal hearing and written submission on record is very important while adjudicating the case.

6. It is observed that all the hearings were granted physical hearing that too during complete lockdown and last hearing was virtual hearing granted only to main noticee

with respect to only one show cause notice and noticee had sent the correction in record of personal hearing, which is not taken on record. However, there is an admission on the part of the Original Adjudicating Authority in its order in para 38.2. In this view, non-granting of effective hearing itself is in gross violation of natural justice.

7. As regards denial of cross examination, even though advocate for respondents tried to distinguish the judgment of this Hon'ble Court in case of Mehek Glaze, we do not agree with those contention. However, The Hon'ble Apex Court in case of Andaman Timber Industries V/s Commissioner of C.Ex., Kolkata-II, reported in CDJ 2015 SC 1277, was dealing with a case where the assessee had not been allowed cross examination of the witnesses by the adjudicating authority though the statement of those witnesses were made the basis of the impugned order. This was held *"to be a serious flaw which made the order nullity in as much as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to*

*the assessee. It would be pertinent to note that the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.”*

The Apex Court further held in paragraph 7 as under :

*“7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers / witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for*

*the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No.2216 of 2000, order dated 17.03.2005 [2005 (187) E.L.T. A33 (S.C.), Commissioner v. Andaman Timber Industries Pvt. Ltd.] was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.”*

8. The authority concerned is seeking to rely upon certain statements following the various decisions of this Court, the dialect of which is not necessary and the decision of the Apex Court is sufficient enough to bring to the fore the requirement of permitting the cross examination of witnesses whose statements are sought to be relied upon by the authorities.

9. In view of the above, we are of the opinion that the order impugned passed by the authority concerned deserves to be quashed and set aside.

10.1 Accordingly, we allow all these petitions, quashing and setting aside the impugned order passed by the authority concerned in all these petitions, remitting the matters to the stage where it was left for the authority concerned to avail an opportunity within two weeks from the date of receipt of

copy of this order through e-mail to respective advocates as also through R.P.A.D.

10.2 Once this opportunity of personal hearing is granted, without seeking any further adjournment, the petitioner/s shall cooperate.

10.3 Let the adjudicating authority decide the issue of the cross examination of the witnesses in two weeks thereafter.

10.4 The entire process of adjudication shall be expedited.

10.5 All concerned shall cooperate.

THE HIGH COURT  
OF GUJARAT

(SONIA GOKANI,CJ(DESIG.))

WEB COPY

M.H. DAVE



(SANDEEP N. BHATT,J)