

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 15508 of 2020**

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VIMAL YASHWANTGIRI GOSWAMI

Versus

STATE OF GUJARAT

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Appearance:

MR CHETAN K PANDYA(1973) for the Petitioner(s) No. 1

for the Respondent(s) No. 2,3

MR KM ANTANI, AGP /PP(99) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**

and

**HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 10/12/2020

ORAL ORDER

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

By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs :

*“(a) To issue a Writ of Mandamus and/or Writ of Certiorari and/or any other appropriate writ, order or direction, quashing and setting aside an order dated 25/02/2020 passed by the respondent no.3 for cancellation of registration at Annexure-A to this petition.*

*“(b) To issue a Writ of Mandamus and/or Writ of Certiorari and/or any other appropriate writ, order or direction, directing the respondent No.3 to pay compensation to the petitioner as may be deemed fit to this Hon'ble Court for his*

*unqualified and unwarranted actions taken without following due process of law.*

*(c) Pending admission, final hearing and disposal of this petition, to stay implementation and operation of the order dated 25.2.2020 passed by the respondent no.3 of cancellation of registration at Annexure-A to this petition on such terms and conditions as may be deemed fit and proper to this Hon'ble Court.*

*(d) To pass any other and further orders as may be deemed fit and proper in the interest of the justice and the petitioner.”*

The writ-applicant is a proprietor of a proprietary concern running in the name of Heugo Metal. The writ-applicant is registered with the GST authority. The registration is dated 26<sup>th</sup> June 2018.

It appears from the materials on record that the respondent no.2 issued a show-cause notice dated 20<sup>th</sup> November 2019 in the Form GST REG-17, calling upon the writ-applicant to show-cause as to why the registration under the GST should not be cancelled. Such notice issued by the respondent no.2 is under Rule 22(1) of the Central Goods and Services Tax Rules, 2017. The notice dated 20<sup>th</sup> November 2019 referred to above reads as under :

*“Form GST REG-17*

*[See Rule 22(1)]*

*Reference Number : ZA241119067404M*

*Date : 20/11/2019*

*To*

*VIMAL YASHWANTGIRI GOSWAMI  
B-15, AMARDEEP APPARTMENT,  
NR MANMANDIR TENAMENT,  
GAYATRI MANDIR BUS STAND,  
NIRNAY NAGAR, RANIP, AHMEDABAD, GUJARAT 382480*

*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. 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.*

*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.*

*Place : Gujarat*

*Date : 20/11/2019*

*AJITSINGH VIJAYSINGH DODIYA  
Assistant Commissioner*

*Ghatak 7 (Ahmedabad): Range-2: Division-1: Gujarat”*

The writ-applicant filed his reply to the aforementioned show-cause notice on 27<sup>th</sup> November 2019, i.e. well within the stipulated period of seven days. It appears that upon receipt of the reply, the respondent no.2 drop the proceedings for cancellation of registration vide order dated 30<sup>th</sup> November 2019.

The respondent no.3 thereafter issued a fresh show-cause notice dated 24<sup>th</sup> January 2020 in Form GST REG-17 under Rule 22(1) of the Rules once again calling upon the writ-applicant to show-cause why the registration should not be cancelled. The show-cause notice dated 24<sup>th</sup> January 2020 referred to above reads thus :

*“Form GST REG-17  
[See Rule 22(1)]*

*Reference Number : ZA240120086373Y*

*Date : 24/01/2020*

*To*

*VIMAL YASHWANTGIRI GOSWAMI  
B-15, AMARDEEP APPARTMENT,  
NR MANMANDIR TENAMENT,  
GAYATRI MANDIR BUS STAND,  
NIRNAY NAGAR, RANIP, AHMEDABAD, GUJARAT 382480*

*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. In case, Registration has been obtained by means of fraud, wilful mis-statement or suppression of facts.

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 03/02/2020 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.

Place : Gujarat  
Date : 24/01/2020

BHAVESH HIRALAL MODI  
Commercial Tax Officer  
Ghatak 7 (Ahmedabad): Range-2: Division-1: Gujarat”

The writ-applicant once again filed his reply dated 2<sup>nd</sup> February 2020.

It appears that the respondent no.3, upon receipt of the reply, drop the proceedings for cancellation of registration vide order dated 4<sup>th</sup> February 2020.

Surprisingly, on the very same day and date, the respondent no.3 once again issued a show-cause notice under Rule 22(1) of the Rules. The notice dated 4th February 2020 reads thus :

*“Form GST REG-17*

*[See Rule 22(1)]*

*Reference Number : ZA240220008192E*

*Date : 04/02/2020*

*To*

*VIMAL YASHWANTGIRI GOSWAMI  
B-15, AMARDEEP APPARTMENT,  
NR MANMANDIR TENAMENT,  
GAYATRI MANDIR BUS STAND,  
NIRNAY NAGAR, RANIP, AHMEDABAD, GUJARAT 382480*

*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. Offence under section 132(1)(b)(c) and (k) as specified attachment sheet.*

*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 13/02/2020 at 18:36.*

*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.*

*Place : Gujarat  
Date : 04/02/2020*

*BHAVESH HIRALAL MODI  
Commercial Tax Officer  
Ghatak 7 (Ahmedabad): Range-2: Division-1: Gujarat”*

As the writ-applicant was not in receipt of any attachment along with the show-cause notice, vide letter dated 5th February 2020, he requested the authority to supply the attachment sheet to the show-cause notice dated 4th February 2020.

It appears that despite the specific request for furnishing the attached sheet, the request was not paid heed to, and ultimately, the writ-applicant had to file his reply dated 13th February 2020 to the show-cause notice dated 4th February 2020.

The materials on record further indicate that the Commercial Tax Officer GHATAK-7 (Ahmedabad) proceeded to pass an order dated 25th February 2020, cancelling the registration. The order reads thus :

*“Reference Number : ZA240220008192E*

*Date : 25/02/2020*

*To*

*VIMAL YASHWANTGIRI GOSWAMI  
B-15, AMARDEEP APPARTMENT,  
NR MANMANDIR TENAMENT,  
GAYATRI MANDIR BUS STAND,  
NIRNAY NAGAR, RANIP, AHMEDABAD, GUJARAT 382480*

*Application Reference No.(ARN) : AA240220004895N*

*Order for Cancellation of Registration*

*This has reference to your reply dated 13/02/2020 in response to the notice to show cause dated 04/02/2020 Whereas no reply to notice to show cause has been submitted;*

*The effective date of cancellation of your registration is 26/06/2018*

*Determination of amount payable pursuant to cancellation :*

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

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

*You are required to pay the following amounts on or before 06/03/2020 failing which the amount will be recovered in accordance with the provisions of the Act and rules made thereunder.*

<i>Head</i>	<i>Central Tax</i>	<i>State Tax/ UT Tax</i>	<i>Integrated Tax</i>	<i>Cess</i>
<i>Tax</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Interest</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Penalty</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>

<i>Others</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Total</i>	<i>0.0</i>	<i>0.0</i>	<i>0.0</i>	<i>0.0</i>

*Place : Gujarat*  
*Date : 25/02/2020*

*BHAVESH HIRALAL MODI*  
*Commercial Tax Officer*  
*Ghatak 7 (Ahmedabad)”*

Being dissatisfied with the order passed by the Commercial Tax Officer dated 25th February 2020, referred to above, the writ-applicant has come up with the present writ-application.

On 4th December 2020, this Court passed the following order :

*“We have heard Mr. Chetan Pandya, the learned counsel for the petitioner and Mr. Chintan Dave, the learned AGP for the State respondents on advance copy. Mr.Dave waives notice. He prays for and is granted five days’ time to obtain instructions in the matter.*

*Prima facie we are convinced that the order impugned dated 25.02.2020(Annexure-A to the petition) cannot be sustained for several reasons, some of them being :-*

*(a) It refers to the reply of the petitioner to the show cause notice but in the same continuation, it mentions that no reply has been received.*

*(b) No reasons are recorded for cancellation.*

*(c) No facts are mentioned.*

*(d) No discussion on the reply.*

*Mr. Pandya has also pointed out that application for revocation of the said cancellation was filed on 28.02.2020 within three days of the cancellation of the order but the same is still pending and the Officer concerned is sitting tight over the application for revocation which is a statutory application moved under Section 30 of the Act.*

*Let this matter be placed on top of the board on 10.12.2020.”*

We have heard Mr.Chetan Pandya, the learned counsel appearing for the writ-applicant and Mr.K.M.Antani, the learned Government Pleader appearing for the respondents.

Mr.Pandya, the learned counsel appearing for the writ-applicant has raised manifold contentions questioning the legality and validity of the very action on the part of the respondents in initiating the proceedings and also the final order passed cancelling the registration.

It would not be out of place at this stage to state that the writ-applicant has one more grievance to redress. It is pointed out that an application was preferred under Section 30 of the GST Act seeking revocation of cancellation of the registration way back in February 2020. However, till this date, even such application filed under Section 30 of the Act has not been decided.

Be that as it may, we are inclined to quash the impugned order dated 25th February 2020 passed by the Commercial Tax Officer on the short ground that the same is a non-speaking order passed without any application of mind. It is very sad to note the manner in which the show-cause notices came to be issued. The show-cause notices, referred to above, are absolutely bereft of any material particulars or information, and it is but obvious that in the absence of the same, how does the authority expect the writ-applicant to respond to the same in an effective and meaningful manner.

We fail to understand that having dropped the proceedings once, what prompted the authority to issue a second show-cause notice and even after discharging the second show-cause notice, what prompted the authority to issue a third show-cause notice and that too on the very same day and date of the discharge of the second show-cause notice.

We are left with no other option but to quash the impugned order dated 25th February 2020 at Annexure-A.

In the result, this writ-application succeeds and is hereby allowed. The impugned order passed by the respondent no.3 dated 25th February 2020 (Annexure-A to this petition) is hereby quashed and set-aside.

**(J. B. PARDIWALA, J.)**

**(ILESH J. VORA, J.)**

/MOINUDDIN