

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7155 of 2022

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ASTERPETAL TRADE AND SERVICES PRIVATE LIMITED

Versus

STATE OF GUJARAT

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Appearance:

MS. DIMPLE K. GOHIL(7451) for the Petitioner(s) No. 1
for the Respondent(s) No. 2,3

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 20/04/2022

ORAL ORDER

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

1. Rule returnable forthwith. Mr. Utkarsh Sharma, the learned AGP waives service of notice of rule for and on behalf of the respondents.

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

“(a) Your Lordships be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner’s case and after going into the validity and legality thereof be pleased to quash and set aside the show cause notices dated 15.06.2021 and 28.07.2021 and the impugned order dated 10.08.2021 passed by Respondent No.3 purporting to cancel the registration of the Petitioner;

“(b) Your Lordships be pleased to issue a writ of Madamus or any other appropriate writ in the nature of Mandamus ordering and directing the Respondents to forthwith refrain from taking any further steps or proceeding pursuant to or in implementation of the impugned order dated 10.08.2021 passed by Respondent No.3;

(c) That pending the hearing and final disposal of the above Petition, this Hon'ble Court be pleased to stay the effect and operation of impugned order dated 10.08.2021;

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

(e) Such other and further order or orders as may be deemed just and proper in the facts and circumstance of the present case may kindly be granted."

3. The writ applicant is engaged in the business of trading of bullion and agricultural commodities. The writ applicant is registered under the GGST Act with effect from 25.01.2018. The writ applicant came to be served with a show cause notice dated 15.06.2021 in Form GST REG – 17/31 calling upon the writ applicant to show cause as to why the registration should not be cancelled. The show cause notice reads thus:

"Form GST REG-17/31
[See Rule 22(1) sub-rule (2A) of rule 21A]

Reference Number:ZA240621056934

Date: 15/06/2021

To,
ASTERPETAL TRADE & SERVICES PRIVATE LIMITED
SF-74, SECOND FLOOR, CITY MALL-1, NAVJIVAN MILL COMPOUND,
KALOL, Gandhinagar, Gujarat, 382721

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-Taxpayer found Non-Functioning/Not Existing at the Principal Place of Business

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 23/06/2021 at 11:39.

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 15/06/2021

*Place: Gujarat
Date 15/06/2021*

*Jagatsinh Vaghubhai Zala
Commercial Tax Officer
Ghatak -25 (Kalol): Range-7, Division-3, Gujarat."*

4. We have heard Mr. Prakash Shah, the learned Senior Counsel assisted by Ms. Dimple Gohil, the learned advocate appearing for the writ applicant and Mr. Utkarsh Sharma, the learned AGP appearing for the respondents.

5. It appears that no action was taken pursuant to the aforesaid show cause notice. Later, the Commercial Tax Officer, Ghatak – 25 (Kalol) , Range -7, Division – 3, Gujarat, issued a fresh show cause notice dated 28.07.2021. The same reads thus:

***"Form GST REG-17/31
[See Rule 22(1) sub-rule (2A) of rule 21A]***

Reference Number:ZA240721360490T

Date: 28/07/2021

*To,
Registration Number (GSTIN/Unique ID): 24AANCA7754PIZX
ASTERPETAL TRADE & SERVICES PRIVATE LIMITED
SF-74, SECOND FLOOR, CITY MALL-1, NAVJIVAN MILL COMPOUND,
KALOL, Gandhinagar, Gujarat, 382721*

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 misstatement 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 05/08/2021 at 11:55.

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 28/07/2021.

Place: Gujarat
Date : 28/07/2021

Jagatsinh Vaghubhai Zala
Commercial Tax Officer
Ghatak -25 (Kalol): Range-7, Division-3, Gujarat."

6. Ultimately, the final order came to be passed dated 10.08.2021 cancelling the registration. The order reads thus:

"Reference Number: ZA240821055145S Date: 10/08/2021

To,
ASTERPETAL TRADE & SERVICES PRIVATE LIMITED
SF-74, SECOND FLOOR, CITY MALL-1, NAVJIVAN MILL COMPOUND,
KALOL, Gandhinagar, Gujarat, 382721.
GSTIN/UIN : 24AANCA7754PIZX
Application Reference No. (ARN): AA240721105624M
Date:28/07/2021

Order for Cancellation of Registration

This has reference to your reply dated 06/08/2021 in response to the notice to show cause dated 28/07/2021
Whereas no reply to notice to show cause has been submitted.

The effective date of cancellation of your registration is 25/01/2018

Determination of amount payable pursuant to cancellation:

Accordingly, the amount payable by you and the computation and the 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 submission of final return furnished by you.

You are required to pay the following amounts on or before 20/08/2021 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	0	0	0	0
Others	0	0	0	0
Total	0.0	0.0	0.0	0.0

Place: Gujarat
Date : 10/08/2021

Jagatsinh Vaghubhai Zala
Commercial Tax Officer
Ghatak -25 (Kalol)"

7. The show cause notices, referred to above, and the impugned order are as vague as anything. The issue is now covered by the decision of this Court in the case of ***Aggarwal Dyeing and Printing Works vs. State of Gujarat & 2 Ors., Special Civil Application No.18860 of 2021, decided on 24.02.2022.***

8. In view of the aforesaid, this writ application succeeds and is hereby allowed. The impugned order cancelling the registration and the show cause notice is hereby quashed and set aside. The registration stands restored. If the department wants to proceed further it may do so strictly in accordance with law keeping in mind the observations made by this Court in the recent pronouncement in the case of ***Aggarwal Dyeing and Printing Works (Supra).***

9. Direct service is permitted.

सत्यमेव जयते (J. B. PARDIWALA, J)

THE HIGH COURT
OF GUJARAT (NISHA M. THAKORE, J)

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