

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 885 of 2021

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M/S UNI WELL EXIM
Versus
STATE OF GUJARAT

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Appearance:

MR HARDIK P MODH(5344) for the Petitioner(s) No. 1
MR UTKARSH SHARMA, AGP GOVERNMENT PLEADER for the
Respondent(s) No. 1,2,3

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

Date : 31/03/2022

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:-

“11(a) be pleased to issue a writ of certiorari, or a writ in the nature of certiorari or any other appropriate order or direction for calling upon the impugned order dated 25.09.2020 passed by the respondent no.3 (Annexure-N) and after going through the same, the impugned order dated 25.09.2020 may kindly be quashed and set aside with an order the respondent to sanction the refund claim in terms of Section-54 of the CGST Act, 2017/SGST Act, 2017;

(b) be pleased to issue a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate order or direction directing the respondents, their servants, agents or representatives to sanction the refund claim of the amount mentioned in the refund claim filed in August, 2019 alongwith interest in terms of the provisions of CGST Act without any further delay;

(c) pending notice, admission and finalizing of this petition, be

pleased to direct the respondents, their sub-ordinates, agents or their representatives to forthwith sanction the refund provisionally for the amount claimed in the Refund Application dated 24.12.2019 (Annexure F) with such terms and conditions as deemed fit and proper by this Hon'ble Court;

(d) for ad-interim relief in terms of prayer (c) and (d) above;

(e) for costs of the petition/ application and orders thereon; and

(f) for such further and other reliefs, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The facts giving rise to this writ-application may be summarized as under:-

2.1 The writ-applicant is a '*Partnership Firm*'. The firm is engaged in the business of trading of tobacco. The firm holds the Goods and Service Tax Registration with the State of the Gujarat.

2.2 It appears from the materials on record that a show-cause notice came to be issued to the firm on 11.01.2020 in the Form GST-RFD-08 calling upon the writ-applicant to show cause as to why the application for refund filed by the firm for refund should not be rejected. The show-cause notice is at Page-91 of the paper-book, Annexure-I.

2.3 The plain reading of the show-cause notice would indicate that the authority concerned proposed to reject the refund application essentially on the ground that the documents in the form of the purchase order received from the foreign buyer, copy of insurance, proof of outside supplies and the bank statement of each account maintained in different banks were not furnished.

2.4 The firm upon receipt of the show-cause notice as above, replied to the same in the Form GST-RFD-09. Whatever documents were required, were furnished.

2.5 It appears that as no decision was being taken by the authority concerned, the writ-applicant – firm came before this High Court by filing the Special Civil Application No.9955 of 2020.

2.6 The said writ-application came to be disposed of by a Co-ordinate Bench of this Court vide order dated 26.08.2020. The order reads thus:-

“1. Heard Mr. Hardik Modh, learned advocate appearing for the petitioner and Mr. Dharmesh Devnani, learned AGP on advance copy for respondent State.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has mainly prayed as under:

“11(a) That this Hon’ble Court be pleased to issue a Writ or Mandamus, or a Writ in the nature of Mandamus, or any other appropriate Order or direction for calling upon the refund application dated 24.12.2019 (Annexure – F), Show Cause Notice dated 11.01.2020 for rejection of the application for refund (Annexure – I) and reply to the Show Cause Notice dated 25.01.2020 (Annexure J) and after going through the same, order the Respondents to sanction refund claim provisionally in terms of Section 54(6) of the CGST Act, 2017/SGST Act, 2017, read with Rule 91(2) of the CGST Rules, 2017;

(b)That this Hon’ble Court be pleased to issue a Writ or Mandamus, or a Writ in the nature of Mandamus, or any other appropriate Order or direction directing the Respondents, their servants, agents or representatives to adjudicate the Show Cause Notice issued in prescribed Form GST-RFD08 dated 11.01.2020 (Annexure–I) forthwith without any further delay.”

3. *Mr. Modh, learned advocate for the petitioner has further submitted that even though repeated requests have been made by the petitioner to decide the show cause notice and additional issue of refund, the authorities have not, was required to be filed.*

4. *Mr. Dharmesh Devnani, learned AGP submitted that because of present situation of Pandemic Covid-19, the respondents could not give any priority to the same.*

5. *Having heard learned counsels appearing for the parties, without any opinion on merits of the show cause notice dated 11.1.2020 issued by respondent authorities to the petitioner, at this stage, interest of justice would be served, if the concerned respondent authorities shall hear the petitioner on the issue of show cause notice and after hearing the petitioner, pass necessary orders. Such exercise may be preferably undertaken by the concerned authority as expeditiously as possible latest by 09.10.2020. The authority shall pass an appropriate order in accordance with law, without being any influenced by this order.*

6. *Petition is disposed of accordingly. No costs. The petitioner shall serve copy of this order by e-mail upon respondent authority.”*

2.7 After the aforesaid order came to be passed by this Court, the final order came to be passed by the authority concerned in the Form GSD RFD-06 rejecting the application filed by the firm for refund of the ITC.

3. In such circumstances referred to above, the writ-applicant is here before this Court with the present writ-application.

4. We have heard Mr. Hardik Modh, the learned counsel appearing for the writ-applicant and Mr. Utkarsh Sharma, the learned AGP appearing for the respondents.

5. The impugned order in the Form GSD RFD-06 deserves to be quashed and set aside only on one ground and i.e. the impugned order travels beyond the scope of the show-cause notice. We take notice of the fact that in the impugned order, the authority concerned has gone into minutest of the details of the transactions of the writ-applicant- firm with the other companies. These transactions have been found to be doubtful. In such circumstances, the authority thought fit to reject the claim of the writ-applicant – firm for the refund of the ITC.

6. In the show-cause notice, all that has been stated is that few relevant documents have not been furnished and in the absence of those, it was not possible for the authority to process the application for the refund of the ITC. There is not a single allegation beyond this in the show-cause notice. Upon the documents being furnished by the writ-applicant and while going through those documents, if the authority had any doubts with respect to all such transactions, it was expected of the authority to once-again give an opportunity to the writ-applicant to explain all such alleged dubious transactions. The authority could not have straightway proceeded to pass the impugned order incorporating all the details and taking the writ-applicant – firm by a surprise.

7. This litigation could have been easily avoided had the authority applied its mind.

8. In the result, this writ-application succeeds and is hereby allowed. The impugned order is hereby quashed and set aside. The

matter is remitted to the authority concerned. The authority concerned shall issue a fresh show-cause notice furnishing all the relevant details including the details with respect to the transactions, which the authority has found to be doubtful so as to enable the writ-applicant– firm to file an appropriate reply and explain all such transactions.

Let a fresh show-cause notice be issued containing all the necessary particulars within fifteen (15) days from today. Upon receipt of such show-cause notice, the writ-applicant shall file its reply within 8 days and thereafter, the authority shall give an opportunity of personal hearing and proceed to pass the final order.

Let this entire exercise be completed within a period of three (03) months from today without fail.

Direct service is permitted.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

A. B. VAGHELA

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