

PVR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15455 OF 2023

SPCX Private Ltd.

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Prakash Shah i/b. with Mr. Mihir Mehta i/b. PDS Legal, for Petitioner.

Ms.. S. D. Vyas, Additional Govt. Pleader with P. N. Diwan, for the State.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : DECEMBER 11, 2023

P.C.

1. We have heard Mr. Shah, learned Counsel for the petitioner and Ms. Vyas, learned Additional Government Pleader for the respondents.

2. This petition essentially assails the show cause notice dated 11 August 2023. The prayers as made in the petition read thus:-

“(a) this Hon’ble Court 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 (i) the impugned show cause notice no. ACST/D-003/INV/M/s SPCX Pvt Ltd/Show cause/B-22 dated 11.08.2023 issued by the Respondent No.3 (Exhibit “A1”); and (ii) the impugned show cause notice no. impugned show cause notice no. ACST/D-003/INV/M/s SPCX Pvt Ltd/Show cause/B-

48 dated 02.11.2023 issued by the Respondent No.3 (Exhibit "A2");

(b) this Hon'ble Court be pleased to issue a Writ of Prohibition or a writ in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting the Respondents by themselves, their subordinate, servants and agents from acting upon or taking any further proceedings in pursuance of and/or in implementation and/or in furtherance of the (i) the impugned show cause notice no. ACST/D-003/INV/M/s SPCX Pvt Ltd/Show cause/B-22 dated 11.08.2023 issued by the Respondent No. 3 (Exhibit "A1"); and (ii) the impugned show cause notice no. ACST/D-003/INV/M/s SPCX Pvt Ltd/Show cause/B-48 dated 02.11.2023 issued by the Respondent No.3 (Exhibit "A2");

(c) this Hon'ble Court be pleased to restrain the Respondents from giving effect to or initiate any steps or proceedings in respect of (i) the impugned show cause notice no. ACST/D-003/INV/M/s SPCX Pvt Ltd/Show cause/B-22 dated 11.08.2023 issued by the Respondent No. 3 (Exhibit "A1"); and (ii) the impugned show cause notice no. ACST/D-003/INV/M/s SPCX Pvt Ltd/Show cause/B-48 dated 02.11.2023 issued by the Respondent No.3 (Exhibit "A2"); pending the hearing and final disposal of the present petition;

(d) for ad-interim reliefs in terms of prayer clause (c) above;

(e) for costs of this Petition, and

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

3. It is not in dispute that the show cause notice is pending adjudication. The grievance of Mr. Shah is that there are certain documents which are sought to be referred by the Designated Officer in the show cause notice, namely statement of one of the transporters. The petitioner addressed a letter dated 17 November 2023 to the Adjudicating Officer that the said statements be

provided to the petitioner. The contents of such letter reads thus:-

“17-11-2023

To,
The Assistant Commissioner of State Tax,
PUN-INV-D-003, 2nd Floor, GST Bhavan
Airport Road, Yerawada,
Pune-411006.

Subject: Preliminary submission and request for providing documents.

Ref.: SCN No.ACST/D-003/INV/M/s.SPCX Pvt.Ltd./
Final Show Cause/2023-24/B-48 dated 02/11/23

Respected Sir,

We, SPCX Private Limited, are in receipt of the above referred Show Cause Notice(“SCN”). We are in process of preparing the reply to the said SCN. While analysing the SCN, it appears that your good self has undertaken investigation and recorded certain statements. These records of investigations are crucial in the present matter. Hence, in the above referred matter, we would like to make following requests:

1. Grant us a chance of personal hearing
2. In para 1 at page no.2 of impugned SCN, there is reference of statement of one of the transporters. We hereby request your good self to provide us copies of the said statement.
3. In para 1 of page no.2, there is a reference of summons issued to multiple transporters. In this regard, request you to provide us copies of all the summons issued in the present case, responses received, and statements recorded alongwith all other relevant documents.
4. Grant us a chance of taking cross examination of relevant transporters and stakeholders including the transporter whose statement has been relied upon in the present case.

We trust that our request is based on the principles of natural justice and fair play. The right to obtain the certified copy of the statement as well as right to cross-examine is basic tenet of natural justice and any adjudication process. Hence, kindly provide the same at your earliest convenience, so as to enable us to prepare proper reply to SCN and attend the personal hearing in due time.”

4. The grievance of Mr. Shah is that such documents were required to be made available to the petitioner, which was a legitimate request of the petitioner, and in consonance with the principles of natural justice.

5. Considering the facts and circumstances of the case, we are of the opinion that the adjudication of the show cause notice can be taken forward, by permitting the petitioner to urge all contentions in relation to the show cause notice. Also certain material as pointed out by the petitioner i.e. the statement of one of the transporters recorded during enquiry, needs to be provided to the petitioner, so that the petitioner can take appropriate plea before the adjudicating officer on the case being made out by the department against the petitioner so that, the adjudicating officer can consider such plea of the petitioner in adjudication of the show cause notice.

6. Accordingly, request of the petitioner to provide that

statement of the transporter as made in the letter dated 17 November 2023 needs to be complied by the Adjudicating Officer, within a period of two weeks from today.

7. We are informed by the learned Counsel for the petitioner that all the three directors of the petitioner are not required to remain present at the hearing of the show cause notice and Mr. Arun Singhal, one of the directors who is stated to be dealing with the operations and taxation of the petitioner, would now appear and co-operate in the adjudication of the show cause notice. We accept such statement as made on behalf of the petitioner.

8. The adjudicating officer, after furnishing to the petitioner the documents as referred above, shall fix a convenient date when the petitioner can be heard on the show cause notice and thereafter, proceed to pass an order in accordance with law. Let show cause notice be decided within a period of eight weeks from today.

9. Needless to observe that the petitioner would comply with any other requirements as may be desired by the adjudicating officer. The petitioner shall appear before the adjudicating officer in the adjudication of the show cause notice, on a date which may be intimated by the adjudicating officer 72 hours before the date of hearing.

10. All contentions of the parties are expressly kept open.
11. Disposed of in the above terms.

[JITENDRA JAIN, J.]

[G.S. KULKARNI, J.]