

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR CANCELLATION OF BAIL) NO.
24758 of 2024**

In R/CRIMINAL MISC.APPLICATION NO. 20070 of 2024

=====

SUPERINTENDENT (AE) THRO ARIHANT KUMAR JAIN S/O LAL CHAND
JAIN

Versus

VIRBHADRASINH PRATAPSINH CHAUHAN & ANR.

=====

Appearance:

MS. HARDIKA VYAS(11450) for the Applicant(s) No. 1

MR. APURVA N MEHTA(7202) for the Respondent(s) No. 1

MR. ROHAN SHAH APP for the Respondent(s) No. 2

=====

CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 25/09/2025

ORAL ORDER

1. By filing instant application, the applicant - The Superintendent (AE) of Central GST & Central Excise, Gandhinagar, has preferred present application for setting aside order dated 25.10.2024 in Criminal Misc. Application No.20070 of 2024 passed by this Hon'ble Court.
2. Learned advocate Ms. Hardika Vyas appears for the applicant submits that applicant herein is the original complainant and respondent no.1 is the original accused person. As certain acts and actions of the respondent no.1 are found to be illegal and as he has not complied with the statutory provisions in accordance with law, and

by doing so he has profited huge volume of amount and Government Exchequer has to suffer loss, and therefore, FIR has been registered against him on 02.09.2024. Pursuance to which investigation commenced, and he was apprehended, and then after he preferred bail application before this Hon'ble court. The said bail application was entertained by this Hon'ble. During the course of hearing, it was brought to the notice of co-ordinate bench of this court that the accused had already deposited 60 lakhs and was also ready and agreeable to deposit 10% of the outstanding bill before the office and an undertaking to that effect is also filed before this Hon'ble court to deposit Rs. 90 lakhs within a period of 7 days. Learned advocate Ms. Vyas further submits that based upon the undertaking filed by the respondent no.1/accused, Hon'ble court has entertained the bail application of the respondent no.1/accused, but at the time of releasing him, specific condition was imposed that within a period of 7 days an amount of Rs.90 lakhs is required to be deposited by the present respondent no.1. He has not strictly adhered with the said terms and conditions, and therefore, apparently on the face of the record as breach of terms and conditions committed by the respondent no.1, the bail order granted by this Hon'ble court is required to be quashed and set aside. Learned advocate has referred the contents of the undertaking filed by the respondent no.1 before this Hon'ble court. She further submits that along with the present application, applicant herein has filed certain

documents in support of the said fact that amount had not been deposited. She further submits that as per the Government provisions the amount deposited by the applicant is required to be shown in electronic cash ledger. Copy of said documents are placed on record which clearly go on to show that respondent no.1 has deposited Rs. 90 lakhs in his own company's electronic cash ledger, but not debited the same from its Electronic Cash Ledger through Form GST DRC-03, and thus, such credit amount in Electronic Cash Ledger of the accused cannot be considered as the amount credited to the Government Exchequer. In a technical sense, it can be said that the said amount credited by the respondent no.1 in the Electronic Cash Ledger can be used and utilized by the respondent no.1 at any given point of time, and therefore, with a sole intent to show his bonafide, respondent no.1 has to make a debit entry through Form GST DRC-03, which has not been done yet, and by not doing so, he has breached the terms and conditions imposed by this Hon'ble Court by not depositing the said amount, mere depositing amount in the Electronic Cash Ledger would not infer that the said amount has been automatically credited in the CGST Department, and therefore, there was express breach on the part of respondent no.1/accused not to adhere terms and conditions imposed by this Hon'ble court at the time of releasing him on bail, and therefore, there is merit in the present application, and application is required to be entertained by quashing and setting aside the said order

passed by this Hon'ble court.

3. Learned advocate Mr. Apurva Mehta who appears on behalf of the respondent no.1/accused has vehemently objected the present application and emphatically submitted that he has filed detailed reply to object the present application. Along with the reply, he has also produced certain documents which crystallized the position of fact that immediately within reasonable period of time the said amount had already been credited by the respondent no.1 herein in the Electronic Government Ledger and to fortify his claim he has also appended those documents along with reply. He has referred certain entries and submitted that from the account of the respondent no.1 total Rs. 90 lakhs has been withdrawn on 01.11.2024, and those amounts have been withdrawn through cheque, the said amount has been debited from the account of the present applicant and credited in the account of the Government out of which Rs.45 lakhs had gone into the portal of the CGST and rest of Rs.45 lakhs had gone into the portal of the SGST. He has produced the copy of the receipt and payment challans duly affixed by the competent Government authority and submitted that the respondent no.1 herein has scrupulously followed the terms and conditions imposed by this Hon'ble court within reasonable period and said fact is clearly found out from the documents. He further submits that order was passed on 25.10.2024 and he has to deposit the said amount on or before 02.11.2024. The respondent no.1 has deposited the said

amount in the respective departments of the Government on 01.11.2024 and those datas are tallied. He has also produced the copy of the Electronic Cash Ledger for the period between 01.04.2024 to 29.11.2024 of the said company wherein those amount has already been credited in the Government accounts. He further submits that by way of filing present application, the applicant has raised serious apprehension that the said amount is lying in a particular place in a portal, and the respondent no.1 herein is in a position to use and utilize the said amount at any given point of time has no legs to stand. He has referred the statutory provisions of the Central Goods and Service Tax Act, 2017, more particularly chapter X (Payment of Tax) Section 49 - Payment of tax, interest, penalty and other amounts, and submitted that the explanation given by the legislature at the time of enactment is required to be seen. He submits that it is stated in the explanation (for the purpose of this section) (a) the date of credit to the account of the Government in the authorized bank shall be deemed to be the date of deposit into Electronic Cash Ledger. He has also referred the form GST DRC-03 and submitted that if applicant would fill up the said form, in that event, his valuable right to prefer appeal would be jeopardized. As per the provision of law, once the said form is filled up, in that event, it can safely be said that there was admission on the part of the applicant about the said amount, and therefore, he cannot prefer appeal to challenge the said proceedings. Admittedly, applicant herein has challenged

the said notice by way of preferring appropriate proceedings and those proceedings are pending for adjudication, and therefore, due to above-stated complexities despite his best efforts he could not be able to fulfill the said form, but he submits that respondent herein is ready to file undertaking to the effect that he will not use the said amount and/or will not claim refund for the same.

4. Learned advocate Mr. Mehta has heavily put reliance upon the decision rendered by this Hon'ble court in the case of **Arya Cotton Industries Vs. Union of India** reported in **[2024] 164 taxmann.com 2 (Gujarat)**, and submitted that in the said decision Division Bench of our High Court has already crystallized the position of law that the amount deposited by the party by generating challan will get credited into the account of the Government immediately upon deposit and later on the same shall be adjusted against tax payable as per the Return filed by debiting the Electronic Cash Ledger, and therefore, the tax liability of the registered person will be discharged to the extent of the deposit made to the Government. He further submits that respondent herein has fully complied with the terms and conditions in scrupulous manner and said fact is clearly found out from the documents available on record. The amount is already debited from the account of the present applicant and amount is credited into the portal of the Electronic Ledger, and therefore, there is no merit in the application, and the application is required to be dismissed

in limine at the threshold.

5. Having heard the learned advocates for the respective parties and having gone through the material available on record including the impugned order, what appears is that cancellation of bail is sought on the ground that the respondent no.1 herein has not strictly adhered with the terms and conditions imposed by this Hon'ble court while enlarging him on bail.
6. Before dwelling into issue in this matter, I would like to put reliance upon statutory provisions which are as under:

Chapter X (Payment of Tax) Section 49 of the Central Goods and Services Tax Act, 2017.

¹49. Payment of tax, interest, penalty and other amounts.

(1) xxx xxx

...

(11) xxx xxx

³[(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed]

Explanation.-For the purposes of this section,-

- (a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the

electronic cash ledger;

(b) the expression,-

(i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

7. I would also like to put reliance upon para-24 of the decision rendered by this Hon'ble court in the case of **Arya Cotton Industries** (supra).

"24. In view of the above analysis of the provisions of the Act, the decided case laws and reliance placed by the respondents on the decisions in cases of *Megha Engineering & Infrastructures Ltd. (Supra)*, *RSB Transmissions (India) Limited (supra)* and *India Yamaha Motors Private Limited (Supra)* taking a contrary view, are not in line of the provisions of the Act and the Rules made thereunder and therefore, the same are not followed but the judgment in case of the *Vishnu Aroma Pouching Pvt. Ltd. (Supra)* is followed and it is therefore held that the tax amount which has already been credited to the Government by depositing an electronic cash credit ledger by the petitioner is required to be considered as a payment of tax which gets adjusted at the time of filing of the return by debit in the electronic cash ledger as per the scheme of the CGST Act and therefore, the question of payment of interest would not arise for the period from the date of deposit of the amount in the electronic cash ledger by the petitioner till the date of filing of the return. As per the provisions of the Act, the amount deposited by the petitioner by generating Challan will get credited to the account of the Government immediately upon deposit and later on the same shall be adjusted against the tax payable as per the return filed by debiting the electronic cash ledger

and therefore, the tax liability of the registered person will be discharged to the extent of the deposit made to the Government. As per the Scheme of the Government, it is only for the purpose of accounting that the debit in electronic cash ledger will be made at the time of filing of the return otherwise the amounts get credited to the account of the Government immediately upon the deposit. Therefore, once the amount deposited by the petitioner is credited to the account of the Government, the tax liability of such registered person stands discharged on the said date subject to setting off by debit in electronic cash ledger for accounting purpose at the time of filing of return to set off liability against such deposit of the amount which was credited to the account of the Government and therefore, the petitioner cannot be made liable to pay the interest from the date of deposit in the account of the electronic cash ledger till the date of filing of the return."

8. Therefore, considering the Section 49 of the Central Goods and Services Tax Act, 2017 and para-24 of **Arya Cotton Industries** (supra) which clearly go onto show that the amount once debited from the person concerned and credited into the Government account, in that event, the tax liability of such registered person stands discharged on the said date. Here in the case on hand, the order enlarging the respondent no.1 was passed on 25.10.2024 and he has to deposit the said amount on or before 02.11.2024, and it transpires from the Electronic Cash Ledger that the respondent no.1 has deposited the said amount in the respective departments of the Government on 01.11.2024 and those datas are tallied with the copy of the Electronic Cash Ledger for the period between 01.04.2024 to 29.11.2024, therefore, there is no

breach of terms and conditions on the part of the respondent no.1 herein. Further, the apprehension with regard to the said amount lying in a particular place in a portal and the respondent no.1 herein is in a position to use and utilize the said amount at any given point of time cannot be considered as the respondent no.1 is ready to file undertaking to the effect that he will not use the said amount and/or will not claim refund for the same. Further, it is well within the knowledge of one and all that the criteria to consider the bail application and to reject the bail granted by the trial court are quite different and distinct, and certain parameters and guidelines laid by the Hon'ble Apex Court are strictly required to be adhered with. Therefore, considering the above-stated factual aspects of the facts of the matter, I am of the considered opinion that the present application for cancellation of bail is required to be rejected.

9. In view of the above, I do not find any reason to entertain the present application as there is no breach of terms and conditions on the part of the respondent no.1. Hence, the present application is hereby rejected. Notice is discharged.

AMIT ITALIAN

(DIVYESH A. JOSHI,J)