IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12498 of 2020
With
CIVIL APPLICATION (FOR FIXING DATE OF HEARING) NO. 1 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 12498 of 2020

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VINODKUMAR MURLIDHAR CHECHANI PROPRIETOR OF M/s CHECHANI TRADING CO.
Versus
STATE OF GUJARAT & 1 other(s)

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Appearance:
MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
MR CHINTAN DAVE, AGP for the Respondent(s) No. 1,2

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 09/12/2020

COMMON ORAL ORDER

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

1. We have heard Mr. Tushar Hemani, the learned Sr. Counsel assisted by Ms. Vaibhavi Parikh, the learned counsel appearing for the writ applicant and Mr. Chintan Dave, the learned AGP appearing for the State - respondents on advance copy served upon him.

2. The challenge in this writ application is to the legality and validity of the order of provisional attachment of the bank accounts passed under Section 83 of the Gujarat Goods and Services Tax Act, ("GST Act" for short). There are two orders on record. The first order is dated 28.08.2020 (inadvertently mentioned as 28.08.2018, at Annexure-A) passed by the Additional Commissioner, CGST, Ahmedabad South for the provisional

attachment of the Cash Credit/Current Account held by the writ applicant with the AMCO Bank. The second order is also of the provisional attachment under Section 83 of the GST Act of one Current Bank Account and one Savings Bank Account held by the writ applicant in the HDFC Bank Ltd. The challenge to this action of invoking Section 83 of the Act by the respondents is on manifold grounds.

3. One of the submissions of Mr. Tushar Hemani, the learned Senior Counsel appearing for the writ applicant based on or rather fortified by few orders passed by this Court is that the Cash Credit Account cannot be ordered to be attached. In other words, the Cash Credit Account is an account, which enables the assessee to borrow the money from the bank for the purpose of its business. Any money, therefore, which the bank may make available to the assessee would necessarily be in the nature of a loan or cash credit facility. The view taken by our High Court in such circumstances is that, the bank and the assessee will not have the debtor - creditor relationship.

4. Mr. Chintan Dave, the learned AGP appearing for the State respondents submitted that, notice may be issued to enable him to take appropriate instructions in the matter.

5. We are of the view, having regard to the submissions canvassed

on either side, that the writ applicant has been able to make out strong *prima facie* case to have an interim order in his favour so far as the Cash Credit/Current Bank Account No.066028304000013 maintained with the AMCO Bank, Ahmedabad is concerned.

6. In such circumstances, by way of an interim order, we direct that the provisional attachment of the cash credit account referred to above maintained with the AMCO Bank, Ahmedabad, shall no longer operate. The provisional attachment is ordered to be lifted. The AMCO Bank shall permit the writ applicant to operate the Cash Credit Account referred to above. So far as other two accounts maintained with HDFC Bank Ltd. are concerned, appropriate order shall be passed on the next date of hearing.

7. Let **Notice** be issued to the respondents, returnable on **23.12.2020**. No further notice now be issued to the respondents as Mr. Chintan Dave, the learned AGP has already entered his appearance.

8. In view of this order passed today, the connected civil application would not survive and stands disposed of accordingly.

(J. B. PARDIWALA, J)

(ILESH J. VORA,J)

A. B. VAGHELA/Suchit