IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10221 of 2020

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D B IMPEX
Versus
STATE OF GUJARAT

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Appearance:
MR UCHIT N SHETH(7336) for the Petitioner(s) No. 1
MR CHINTAN DAVE, AGP for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 31/08/2020
ORAL ORDER
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. The draft amendment is allowed. The same shall be carried out at the earliest.

2. With the consent of the learned counsel appearing for the parties, the matter is taken up for final hearing. Rule returnable forthwith. Shri Chintan Dave, learned Assistant Government Pleader waives service of notice of Rule for and on behalf of the respondents.

3. By this writ application under Article 226 of the Constitution of India, the writ applicant a Proprietary Concern through its Proprietor has prayed for the following reliefs :

"A. This Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any

other appropriate writ or order directing forthwith release of truck number RJ-47-GA-0270 along with goods contained therein;

B. *This Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order quashing and setting aside impugned confiscation notice dated 15.8.2020 (annexed at Annexure A);*

C. *In the alternative this Hon'ble Court may be pleased to direct the Respondents to provisionally release the goods under Section 67(6) of the GST Acts;*

D. *Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to direct forthwith release of truck number RJ-47-GA-0270 along with goods contained therein and further proceedings pursuant to impugned confiscation notice dated 15.8.2020 (annexed at Annexure A) may pleased be stayed;*

E. *Ex parte ad interim relief in terms of prayer D may kindly be granted;*

F. *Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioner shall forever pray."*

4. We may not delve much into the facts of this matter as we are of the view that this writ application can be disposed of on a short ground.

5. The subject-matter of challenge in the present litigation is the order dated 27.08.2020 passed by the respondent No.3 in Form GST MOV-11. The nature of the

impugned order would suggest that it is a final order of confiscation of goods and conveyance.

6. It appears from the pleadings which are not in dispute that the writ applicant was informed of the date of hearing in Form GST MOV-10. The writ applicant was informed that the hearing would be conducted on 22.08.2020. However, the writ applicant informed the respondent No.3 that he has already approached the High Court challenging the notice in Form GST MOV-10. It appears that the hearing which was scheduled to be held on 22.08.2020 was adjourned. However, during the pendency of the proceedings before this Court, the final order in Form GST MOV-11 came to be passed. It is this order passed in Form GST MOV-11 which is the subject-matter of challenge.

7. It appears that the writ applicant was not given any opportunity of hearing before the final order in Form GST MOV-11 came to be passed.

8. In such circumstances referred to above, we are inclined to remit the matter to the respondent No.3 so as to give an opportunity to the writ applicant to make good his case why the goods and conveyance are not liable to be confiscated under Section 130 of the GST Act, 2017. Shri Chintan Dave, learned AGP would submit that the respondent No.3 shall issue a fresh notice of hearing to the writ applicant and on the date of hearing that may be fixed,

the writ applicant shall appear and make his submissions.

9. In the result, this writ application succeeds and is hereby allowed. The impugned order passed by the respondent No.3 dated 27.08.2020, Annexure-K, in Form GST MOV-11 is hereby quashed and set aside. The matter is remitted to the respondent No.3 with a direction to give an opportunity of hearing to the writ applicant.

10. We may clarify that for any good reason that the hearing of the matter is delayed at the end of the respondent No.3 then the respondent No.3 shall consider the plea of the writ applicant of provisional release of the goods and the conveyance under Section 67(6) of the Act.

11. It goes without saying that while deciding the matter afresh, the respondent No.3 shall keep in mind the decision of this Court rendered in the case of **Synergy Fertichem Pvt. Ltd. vs. State of Gujarat, Special Civil Application No.4730 of 2019** and allied petitions, decided on 23.12.2019. We clarify that we have otherwise not gone into the merits of the matter.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

A. B. VAGHELA