

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 9527 of 2020**

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M/S. FORMATIVE TEX FAB THROUGH ITS PARTNER RATAN KUMAR
SARAF
Versus
STATE OF GUJARAT

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Appearance:

MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1
for the Respondent(s) No. 2,3,4

MR CHINTAN DAVE, AGP - ADVANCE COPY SERVED TO GOVERNMENT
PLEADER/PP(99) for the Respondent(s) No. 1

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

Date : 20/08/2020

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, a businessman, has prayed for the following reliefs:

“a) to quash and to set-aside Form DRC 1A dated 23.07.2020 issued by respondent no 4;

b) to quash and set-aside the impugned provisional attachment order i.e. Form GST DRC-22, for both the premises i.e. for factory premises and residential premises issued in Form GST DRC 22 dated 24.07.2020 by respondent no 4.

c) Pending admission, hearing and till final disposal of this petition, Your Lordships may be pleased to direct the respondents

- (i) To lift the attachment of both the properties;*
- (ii) To stay the operation of Form GST DRC 01A;*
- (iii) Not to take any coercive action against the petitioner.*

d) To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice.

e) To award costs of and incidental to this application be paid by the respondents;

f) And for this act of kindness, the petitioner shall, as in duty bound, ever pray."

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

2.1 The writ applicant is registered under the GST. He is engaged in the business of manufacturing of different types of knitted fabrics. The writ applicant received a summons dated 30th June 2020 issued by the respondent No.4 under the provisions of Section 70(1) of the GST Act, 2017. The summons was issued for the purpose of recording of the statement of the writ applicant in connection with sale / purchase transactions of the firm. It is the case of the writ applicant that he is 68 years of age and has been medically advised not to travel and stay at home. In response to the summons issued by the respondent No.4 to the writ applicant, a letter was addressed to the respondent No.4 intimating that the writ applicant would not be in a position to remain present on 2nd July 2020.

2.2 It appears that thereafter, the respondent No.4 issued DRC-01A dated 23rd July 2020 in accordance with Rule 142 (1A) of the GGST Rules, 2017. The total liability, as assessed, is to the tune of Rs.69,25,862/- plus interest and penalty.

2.3 It appears that the residential premises of the writ applicant also came to be provisionally attached vide attachment

order dated 24th July 2020. The order of provisional attachment is in Form GST DRC - 22.

3 Being dissatisfied with the aforesaid action on the part of the respondent No.4, the writ applicant is here before this Court with the present writ application.

4 We have heard Mr. Avinash Paddar, the learned counsel appearing for the writ applicant and Mr. Chintan Dave, the learned A.G.P. for the State.

5 We take notice of the fact that no sooner the writ applicant failed to respond to the summons issued to him by the respondent No.4 under Section 70 of the Act, the respondent No.4 proceeded to pass an order in Form GST DRC-01A fixing the liability of Rs.1,07,05,725/- to be paid to the department. It is not in dispute that the writ applicant had no opportunity to make good his case that all his transactions are legal and free from any doubt. Besides the same, the writ applicant had informed the respondent No.4 that he has been medically advised not to get out of his house. During that particular period, the writ applicant had also undergone cataract surgery.

6 In such circumstances referred to above, more particularly, having regard to the fact that a huge liability has been determined to be discharged by the writ applicant, we are of the view that one opportunity of hearing should be given to the writ applicant. In such circumstances, we quash and set aside the order passed by the respondent No.4 in Form GST DRC-01A dated 23rd July 2020 and remit the matter to the respondent No.4 for fresh consideration of the matter after giving an

opportunity of hearing to the writ applicant. The respondent No.4 shall fix a particular date for the *de novo* hearing and intimate about the same to the writ applicant in writing. The writ applicant, upon receipt of the notice from the respondent No.4, shall appear on that particular date and make his submissions. The respondent No.4 shall, thereafter, proceed to pass a fresh order in accordance with law.

7 We are not inclined to disturb the order so far as the provisional attachment of the property of the writ applicant is concerned. Ordinarily, we would have quashed the order of provisional attachment of properties having quashed the order in Form GST DRC-01A. However, as we have thought fit to remit the matter to the respondent No.4, with a view to protect the interest of the Revenue of the Government, we are of the view that attachment should continue so that no third party rights are created during the interregnum period.

8 With the above, this writ application stands disposed of.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

CHANDRESH