

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 4043 of 2020**

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KARAN TOSHNIWAL S/O SUSHIL TOSHNIWAL  
Versus  
STATE OF GUJARAT

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Appearance:

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

AGP(1) for the Respondent(s) No. 1

MR ANKIT SHAH(6371) for the Respondent(s) No. 2

NOTICE SERVED BY DS(5) for the Respondent(s) No. 3

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

Date : 18/08/2020

**ORAL ORDER****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1 By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

*“(a) Quash the press note dated 08.02.2020 at Annexure A to this petition;*

*(b) Quash and set aside the impugned summon at Annexure A1 to this petition;*

*(c) Direct the respondents not to take any actions against the petitioner being proprietor of the M/s Karan Impex exercising powers under Section 69 read with Section 132 without following due procedure of law of assessment and adjudication of alleged evasion of GST as contemplated under Section 61, Section 73 of under Section 74 of the Central Goods and Service Tax Act, 2017;*

*(d) Pending the admission, bearing and final disposal of this petition, stay further proceedings pursuant to summons at Annexure A1 to this petition and no coercive action to be taken against the petitioners;*

*(e) Grant ad-interim reliefs in terms of prayers above;*

*(f) Any other and further relief deemed just and proper be granted in the interest of justice; To award Costs of and incidental to this application be paid by the Respondents;”*

2 We need not delve much into the facts of this litigation as this writ application can be disposed of on a short ground.

3 The goods in question came to be seized and detained under Section 67 of the Central Goods and Services Tax Act. Mr. Poddar, the learned counsel appearing for the writ applicants submitted that he is seeking to confine the relief only to the extent of getting the goods released. He pointed out that his clients have been served with a notice under Section 130 of the Act calling upon them to show cause as to why the goods should not be confiscated. According to Mr. Poddar, the notice issued under Section 130 of the Act is yet to be adjudicated. He prays that pending confiscation proceedings, the goods may be ordered to be released as the liability towards tax, penalty and fine has also been determined by the competent authority.

4 We pointed out to Mr. Poddar the provisions of Section 67(6) of the Act. Section 67(6) of the CGST Act reads thus:

***“67 Power of inspection, search and seizure***

.....

*(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be."*

5 Thus, even pending the confiscation proceedings, the competent authority has the power to pass an order of provisional release of goods subject to certain terms and conditions.

6 We suggested to Mr. Poddar that his clients should prefer an appropriate application under Section 67(6) of the Act for the provisional release of the goods. Mr. Poddar submits that his clients will prefer an appropriate application for the provisional release of the goods, however, this Court may direct the competent authority to pass an appropriate order on such application at the earliest.

7 Without going into the merits of this case, we dispose of this writ application with the following directions:

[1] Pending the confiscation proceedings, if the writ applicants file an application under Section 67(6) of the Act for provisional release of the goods and the vehicle, if any, then the competent authority shall look into the same at the earliest and pass an appropriate order on such application within a period of fifteen days from the date of receipt of such application.

[2] If the writ applicants are in any way aggrieved or dissatisfied with the order that may be passed by the competent authority under Section 67(6) of the Act, then it shall be open for them to prefer an appeal before the appellate authority under Section 107 of the Act.

8 With the above, this writ application stands disposed of. We clarify that we have otherwise not expressed any opinion on merits of the case.

CHANDRESH

**(VIKRAM NATH, CJ)****(J. B. PARDIWALA, J)**