

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 8316 of 2020**

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M/S SAWARIYA TRADERS THROUGH PROPRIETOR MR. MAKHAN
MOHAN SINGH RAJPUT

Versus

STATE OF GUJARAT THROUGH SECRETARY, MINISTRY OF FINANCE

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Appearance:

MR MONAL S CHAGLANI(10240) for the Petitioner(s) No. 1,2

MR DHARMESH DEVNANI, 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 : 20/07/2020

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) *Certiorari quashing the MOV-11 (Confiscation order dated 05.11.19 (Annexure E to the writ petition));*
- (b) *Mandamus directing the respondent No.3 to forthwith release the goods and vehicle without demanding any security;*
- (c) *Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to direct the learned Respondent Authorities to forthwith release goods with vehicle No. MH49 AT 7882 detained/seized in purported exercise of powers under Section 129 and Section 130 of the GST Acts and stay the auctioning of goods and vehicle;*

- (d) *Certiorari quashing the letter dated 09.03.20 issued by the respondent No.3 (Annexed at Annexure – I).*
- (e) *Certiorari quashing the public notice dated 29.06.20 issued for auctioning of goods and vehicle (Annexed at Annexure-K).*
- (f) *Issue any other writ, order or direction in favour of the petitioner with this Hon'ble Court deems fit in the facts and circumstances of the case;*
- (g) *Award cost of the petition to the petitioner;”*

2. It appears from the materials on record that the writ applicant No.1 is engaged in the business of arecanut and is a registered dealer under the GST. The writ applicant No.2 is the owner of the vehicle bearing No.MH-49-AT-7887. The writ applicant No.1 entered into an agreement for sale of arecanuts with one Dwarkesh Enterprise carrying on business at Jamnagar, State of Gujarat. The consignment of arecanut came to be dispatched in the truck owned by the writ applicant No.2 from Nagpur to Jamnagar. The truck along with the goods came to be intercepted by the respondent No.3 on 08.09.2019. At the time of inspection, the GST authority noticed the following :

	The owner/driver/person in charge of the goods conveyance Shri Azrudin has not tendered any documents for the goods in movement.
	Prima facie, the documents tendered are found to be defective.

	The genuineness of the goods in transit (its quality etc) and/or tendered documents requires further verification.
	E-way bill not tendered for the goods in movement
	Others (specify) (1) Tax bill not provided (2) E way bill not provided (3) Tax invoice number not printed

3. In such circumstances referred to above, the goods as well as the vehicle came to be detained under Section 129(1) of the Central Goods and Service Tax Act, 2017 (for short, 'the CGST Act, 2017').

4. Thereafter, an order of confiscation in form MOV-11 came to be passed.

5. After the final order of confiscation of the goods and the conveyance was passed, few more developments took place. The authority concerned decided to put the goods and the vehicle to public auction for the purpose of realising the amount towards tax, penalty and fine. In this regard a public advertisement came to be issued inviting bids from interested parties by determining the off-set price at Rs.46 Lac.

6. It appears that till this point of time the writ applicants did nothing. All of a sudden they woke up and are here before this Court with the present writ application and that too on the date when the final bids received by the authorities are to be opened for the purpose of auction.

7. Although the learned counsel appearing for the writ applicants made an effort to argue the matter on merits yet we made ourselves very clear that the final order of confiscation is appealable under Section 107 of the CGST Act, 2017. The writ applicants should avail the remedy of the statutory appeal provided in law. However, the learned counsel pointed out that he has lost the limitation for the purpose of filing the appeal. In such circumstances referred to above, the learned counsel prays that the writ application may be heard on merits and the impugned order of confiscation may be quashed and set aside.

8. On the other hand, Mr Dharmesh Devnani, the learned AGP appearing for the State respondents pointed out that this writ application may not be entertained as the writ applicants have come at the last minute more particularly when the bids are to be finalized today. Mr Devnani would submit that the total liability of the writ applicants as on date is around Rs.36 Lac, whereas the State is getting an amount of Rs.46 Lac in the auction proceedings, being the off-set price fixed for the purpose of auction.

9. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we inquired with the learned counsel appearing for the writ applicants as to whether his clients are ready and willing to deposit 50% of the amount by way of cheque or demand

draft and the balance 50% by way of Bank Guarantee of any Nationalized bank. We made ourselves very clear that if the writ applicants are ready and willing to deposit the amount as stipulated above then we may consider releasing the goods as well as the conveyance with a further liberty to prefer appeal under Section 107 of the CGST Act, 2017, against the final order of confiscation having regard to the fact that the impugned order of confiscation was served upon the writ applicants in the month of March, 2020.

10. The learned counsel appearing for the writ applicants after taking appropriate instructions from his clients makes a statement that Rs.18 Lac shall be deposited with the respondent No.3 and the balance amount of Rs.18 Lac shall be paid by way of a Bank Guarantee of any Nationalized bank.

11. As the writ applicants are ready and willing to deposit the amount towards their liability, we are inclined to pass the following order :

- (i) The writ applicants shall deposit 50% of Rs.36 Lac with the respondent No.3 and the balance amount of Rs.18 Lac shall be paid by way of a Bank Guarantee of any nationalized bank. This shall be done within a period of two weeks from today.
- (ii) If the amount of Rs.36 Lac as referred to above is paid to the respondent No.3 then the conveyance as well as

the goods shall be immediately released in favour of the writ applicants.

(iii) It shall be open for the writ applicants to prefer an appropriate appeal before the appellate authority under Section 107 of the Act, if they intend to question the legality and validity of the order of confiscation passed in Form MOV-11. If any such appeal is preferred, the appellate authority shall hear the same in accordance with law.

(iv) We clarify that we have not expressed any opinion on the merits of the case. We have passed this order keeping in mind that the goods are of perishable nature and are lying with the respondent No.3 since the month of September, 2019.

12. The writ application stands disposed of in the aforesaid terms.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

Vahid