IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8163 of 2020

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M/S. RUDRA GLOBAL INFRA PRODUCTS LTD. & 1 other(s)

Versus

UNION OF INDIA THROUGH THE SECRETARY & 2 other(s)

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Appearance:

A S TRIPATHI(7613) for the Petitioner(s) No. 1,2

for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MS. JUSTICE SONIA GOKANI**

And

HONOURABLE MR. JUSTICE N.V.ANJARIA

Date : 16/07/2020

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. This is a petition preferred by the petitioners under Articles 14, 19(1)(g), 265 and 300(A) of the Constitution in a matter under the provisions of Central Goods and Central Service Tax Act, 2017 with the following prayers:

> *"(A) That Your Lordships may be pleased to issue a Writ of Mandamus or any other appropriate writ, direction or order,*

quashing and setting aside DRC-03 Forms dated 09.04.2019 (Annexure-"F") thereby ordering cancellation of debit entries of Rs.7,02,10,842/- and Rs.62,89,158/- in the Petitioner's Electronic Credit Ledger maintained under the CGST Act;

(B) That Your Lordships may be pleased to issue a Writ of Mandamus or any other appropriate writ, direction or order, thereby directing Respondent No.2 to allow the Petitioner to take credit of Input Tax Credit aggregating to Rs.7,65,00,000/- in the Petitioner's Electronic Credit Ledger and to allow the Petitioners to utilize such ITC of Rs.7.65 crores for paying GST/IGST on the goods manufactured and supplied by the Petitioner;

(C) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to direct Respondent No.2 herein to allow the Petitioner to take ITC of Rs.7,65,00,000/- in the Petitioner's Electronic Credit Ledger and utilize such ITC for paying GST on supplies of final products on the terms and conditions that may be deemed fit by this Hon'ble Court;

(D) An ex-parte ad-interim relief in terms of para 17 (C) above may kindly be granted.

(E) Any other further relief that may be deemed fit in the facts and circumstances of the case may also please be granted."

2. We have heard learned counsel Mr. Paresh Dave appearing with learned advocate Mr. A.S. Tripathi, learned advocate for the petitioner, who has emphasized that even if the amount of Rs.7,65,00,000/- deposited by the petitioner is voluntary,since the petitioner needs to continue its business operations which, in the present pandemic due to COVID-19 virus, have been badly affected, the respondents are required to be directed to allow the petitioner to use ITC in question.

3. He admitted that the petitioner has not approached the respondents at any point of time making such a request. He also

does not dispute that the investigation which is going on can continue for further period of 18 months approximately and he also does not dispute the provision of Section 76 and 76(2) which is on a statute book reflecting the liabilities of taxes of the parties. Relying on various decisions, it is urged that without following the procedure prescribed under the statute and without any taxing event having taken place, no recovery is permissible.

4. Issue Notice returnable on 24.7.2020.

5. Service by e-mode is permitted to all the respondents.

(SONIA GOKANI, J)

(N.V.ANJARIA, J)

MISHRA AMIT V./ Manshi