IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7519 of 2020

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M/S SHRI DURGA TRADERS
Versus
STATE TAX OFFICER

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Appearance:
MR D K TRIVEDI(5283) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2

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

Date : 19/06/2020
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 proprietor of a proprietary firm engaged in the business of trading in groundnuts and other agricultural products, has prayed for the following reliefs:

"A. Your Lordships may be pleased to admit this petition.

B. Your Lordships may be pleased to allow this petition.

C. Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ directing respondent No.01 to immediately release conveyance / vehicle bearing No.MP 69 H 0130 along with the goods i.e. groundnuts loaded in the same.

D. Pending hearing, admission, notice and final disposal of this petition, an ex-parte ad-interim relief in accordance with prayer clause 'C' may kindly be granted to the petitioner herein;

E. such other / further relief(s) as may be deemed fit in the interest of justice may kindly be granted to the petitioner herein."

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

2.1 The writ applicant is a businessman stationed at Madhya Pradesh. The writ applicant entered into a contract with one M/s.Hariom Agro Industries, Rajkot, Gujarat for supply of groundnuts. The consignment of groundnuts was dispatched in a truck from Madhya Pradesh so as to reach Rajkot.

2.2 On 2nd June 2020, the truck carrying the goods was intercepted by the respondent No.1 herein at Vasad. The driver of the conveyance produced the invoice and the E-way bill. However, the respondent No.1 found few discrepancies in both the documents.

2.3 In such circumstances referred to above, the goods and the conveyance came to be seized and detained.

3 It appears that on 4th June 2020, the writ applicant herein came to be served with a notice for confiscation of goods as well as the conveyance in form GST MOV-10. The total liability, as fixed towards tax and penalty, comes to Rs.44,000/-. It appears that fine of Rs.5,40,000/- is also proposed to be imposed and in addition to the same, Rs.27,000/- is further proposed to be imposed. Thus, a total amount of Rs.6,21,000/- [Rs.27,000/- + Rs.27,000/- + Rs.5,40,000/- + Rs.27,000/-] is proposed to be levied against the writ applicant. The date of hearing of the show cause notice issued in form GST MOV-10 has been fixed today i.e. on19th June 2020.

4 Mr. D.K. Trivedi, the learned counsel appearing for the writ applicant has raised manifold contentions questioning the legality and validity of the entire action including the issue of the show cause notice

under Section 130 of the Act.

5 We do not propose to go into the merits of the matter as we are of the view that we should allow the authority concerned to continue with the adjudication of the show cause notice issued under Section 130 of the Act. However, we are of the view that as the goods being groundnuts are perishable in nature, we should order release of the same along with the conveyance subject to certain terms and conditions pending the confiscation proceedings before the concerned authority.

6 In such circumstances referred to above, we direct the writ applicant to deposit an amount of Rs.54,000/- towards tax and penalty and the balance amount of Rs.5,67,000/- shall be by way of a bank guarantee of any nationalized bank. On deposit of Rs.54,000/- and furnishing of the bank guarantee of the balance amount, the authority concerned shall immediately release the goods as well as the conveyance.

7 We clarify that we have otherwise not gone into the merits of the matter. The confiscation proceedings shall proceed further on its own merits in accordance with law.

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

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

CHANDRESH