

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7465 of 2020**

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M/S HARI OM COMPANY
Versus
STATE OF GUJARAT

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Appearance:

MR VARIS V ISANI(3858) for the Petitioner(s) No. 1
for the Respondent(s) No. 2

MS MANISHA L SHAH, GOVERNMENT PLEADER 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 : 16/06/2020

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 has prayed for the following reliefs:

“[A] This Hon’ble Court may be pleased to issue a writ of certiorari or a writ in nature of certiorari or any other appropriate writ, order or direction quashing and setting aside detention order dated 12.03.2020 in Form GST MOV-6 (annexed at Annexure A) and confiscation notice dated 12.03.2020 in Form GST MOV-10 (annexed at Annexure B).

[b] This Hon’ble Court may be pleased to issue writ of mandamus or a writ in nature of mandamus or any other appropriate writ or order directing the learned Respondent authorities to forthwith release truck no.GJ-25-U-8721 along with the goods contained therein without directing any payment of tax and penalty and/or security and bond.

[C] Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to stay operation of the impugned detention / confiscation orders / notices (annexed at Annexure A/B) and this Hon'ble Court may be pleased to further direct the learned Respondent authorities to forthwith release truck no.GJ-25-U-8721 along with the goods contained therein;

[D] Ex parte ad interim relief in terms of prayer C may kindly be granted;

[E] Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioner shall forever pray”

2 The writ applicant is a sole proprietor of a proprietary firm running in the name of Mr. Manoj Kumar Kudathil Kunil. The proprietary firm is engaged in the business of aracanut, spices, etc. It appears from the materials on record that a consignment of aracanut was transported from Kerala so as to reach to Ahmedabad. While the goods were in transit, on 07.03.2020 in the Vehicle No.GJ-25-U-8721, the same came to be intercepted by the mobile squad of the GST at the Jambusar Padra Road, Vadodara. It appears that at the time of seizure and thereafter upon further inquiry many discrepancies were noticed by the authority as regards the documents etc.

3 We need not go further into the facts as this writ application can be disposed of on a short ground.

4 It appears that initially at the time of detention, an order under Section 129 of the Central/Gujarat Goods and Services Tax Act, 2017 (for short, the Act) came to be passed determining the

amount of tax and penalty to be paid by the writ applicant. Simultaneously, a notice was issued under Section 130 of the Act calling upon the writ applicant to show cause as to why the goods and conveyance should not be confiscated. Thereafter a final order came to be passed of confiscation of the goods and vehicle under Section 130 of the Act. As the final order of confiscation was passed without giving any opportunity of hearing to the writ applicant, the same came to be quashed by this Court and the matter was remanded to the authority to pass a fresh order after giving an opportunity of hearing to the writ applicant.

5 The matter as on date is at the stage of passing appropriate order under Section 130 of the Act. In other words, the adjudication of the confiscation proceedings is going on.

6 Mr. Varis V. Isani, the learned counsel appearing for the writ applicant, vehemently submitted that the detention and seizure itself was illegal as the driver of the conveyance had with him all valid documents including the E-Way bill. Mr. Isani would submit that there is nothing on record to indicate that the writ applicant committed breach of any of the provisions of the Act or the Rules. He would submit that the goods and the conveyance came to be detained way back in the month of March, 2020 and continues to be under detention as on date. He prays that the detention order dated 12.02.2020 in the Form GST MOV-6 and the confiscation notice dated 12.03.2020 in the Form GST MOV-10 may be quashed and set aside and the goods and the conveyance may be ordered to be released.

7 On the other hand, this writ application has been vehemently opposed by Ms. Manisha L. Shah, the learned Government Pleader

appearing for the State respondents. Ms. Shah submits that various irregularities were noticed by the authorities concerned at the time of seizure and detention of the goods and the conveyance. Ms. Shah would further submit that further inquiry in the matter revealed the following:

“Prima facie, the documents tendered were 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 moment.

Others (specify)

Principal place of business does not exist of M/s. Maruti Trading Co. and Hari Om Trading Company as per spot visit report received by Dy. Commissioner (Enf.), Div.-9, and Dy. Commissioner (Enf.), Div.-10

Dealer has filed pending returns after the interception of the vehicle.

Dealer received the goods from Kerala state and after receiving the goods in Gujarat state, he issued the invoices for outward supplies of Kerala state. There is no E-Way bill generation for outward supplies made to Kerala state.

Dealer is getting inward supply from Kerala state, same is shown as outward supply to Kerala state.

All the GSTIN are registered within last 4-5 months”

7.1 Ms. Shah, the learned Government Pleader, further submitted that if the writ applicant is aggrieved in any manner with the action taken by the GST authority, then there is a statutory remedy of appeal provided under Section 107 of the Act.

8 In such circumstances referred to above, Ms. Shah, prays that as there is no merit in this writ application the same may be rejected.

9 Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that we should not interfere at the stage of adjudication of the confiscation proceedings under Section 130 of the Act. The adjudication proceedings shall proceed in accordance with law. However, we are inclined to grant some relief to the writ applicant so as to protect the goods getting damaged, but at the same time keeping in mind the interest of the State also. We direct the writ applicant to deposit an amount of Rs.4,20,000/- towards tax and penalty with the authority concerned and also furnish a bank guarantee to the tune of Rs.22,00,000/- of any Nationalized bank. We are asking the writ applicant to furnish the bank guarantee keeping in mind the value of the goods. The value of the goods is approximately Rs.44,00,000/-. With a view to protect the interest of the writ applicant as well as the State, we direct the writ applicant to furnish bank guarantee equivalent to 50% of the value of the goods, which comes to Rs.22,00,000/-.

10 On deposit of Rs.4,20,000/- towards tax and penalty along with the bank guarantee of Rs.22,00,000/- of any Nationalized bank, the authority concerned shall release the goods and the vehicle at the earliest. The deposit of bank guarantee shall abide by the final outcome after adjudication.

11 We clarify that we have otherwise not expressed any opinion on the merits of the case. The adjudication proceedings shall be

completed on its own merits.

With the above, this writ application stands disposed of.

(VIKRAM NATH, CJ)

A. B. VAGHELA

(J. B. PARDIWALA, J)

