

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 7395 of 2020**

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OM SAI TRADERS

Versus

THE STATE TAX OFFICER (1)

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Appearance:

MR.PARTH CONTRACTOR(7150) for the Petitioner(s) No. 1

MS MANISHA LAVKUMAR 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 : 15/06/2020

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 allow the present petition;*

*(b) This Hon’ble Court may be pleased to quash and set aside the impugned undated Notice issued under Form MOV-10 by the respondent, under Section 130 of the CGST Act and the provisions of the GGST Act;*

*(c) This Hon’ble Court may, during the pendency of the present petition, be pleased to direct the respondent to release the goods under detention, upon the petitioner securing an amount of Rs.9,94,000/-, which is equivalent to the amount of tax demanded along with*

*penalty at the rate of 100% of such tax demanded;*

- (d) For ad-interim reliefs in terms of paragraph (c) above;*
- (e) For such other and further reliefs as this Hon'ble Court may deem fit in the facts of the present case."*

2. It appears from the materials on record that the writ applicant is engaged in the business of trading of various goods more particularly Tobacco. The writ applicant seeks to challenge the following :

- "(i) the act of the respondent of detaining the goods, allegedly under Section 129(2) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'CGST Act');*
- (ii) the undated Notice issued under Form MOV-10 (hereinafter referred to as 'the Notice') purportedly under Section 130 of the CGST Act and the Gujarat Goods and Service Tax Act, 2017 (hereinafter referred to as 'GGST Act'), as being wholly illegal, erroneous and without the authority of law."*

3. The writ applicant purchased around 17500 units of the Shankar Brand Unmanufactured Tobacco from the Shiv Shankar Tobacco Private Limited situated at Santej, Kalol. The goods were to be transported and delivered at the premises of the writ applicant by road through vehicle No.GJ-02-XX-1706. The vehicle is of the ownership of a company by name Paresh Transport.

4. It is the case of the writ applicant that the original vehicle bearing Registration No.GJ-02-XX-1706 entered one Vantada Toll Plaza on the Ratanpur – Himmatnagar Stretch of National Highway No.48 at about 05:41 hours. Some time thereafter when it was only 4-5 kms. away from its destination, it broke down. Thereafter, another vehicle was arranged bearing Registration No.RJ-27-GA-4237 and the goods were transferred to the said vehicle for being carried up to its destination. However, just before the said second vehicle could reach the destination, it was intercepted by the authorities. The vehicle and the goods were accordingly seized only for the discrepancy in the e-way bill that the vehicle number was not correlated.

5. We need not go further into the facts as we are of the view that the writ application can be disposed of on a short ground.

6. We take notice of the fact that the proceedings under Section 129 of the GST Act came to be initiated and the authority concerned determined the amount towards penalty and tax. It comes to around Rs.9,94,000/- (Rupees Nine Lacs Ninety Four Thousand only).

7. It also appears that simultaneously the authority concerned issued a notice under Section 130 of the Act calling upon the writ applicant to show cause as to why the goods and the vehicle should not be confiscated as *prima facie* the intention of the writ applicant was to evade the payment of tax.

8. It is at the stage of show cause notice under Section 130 of the Act that the writ applicant has come before this Court praying for the reliefs as referred to above.

9. Mr.Parth Contractor, the learned counsel appearing for the writ applicant submitted that there is no good reason for the authority to issue a show cause notice under Section 130 of the Act. According to Mr.Contractor, no case is made out for confiscation. Mr.Contractor seeks to rely on a decision of this Court in the case of **Synergy Fertichem P. Ltd. vs. State of Gujarat**, reported in **2020 (33) GSTL 513 (Guj.)**.

10. Mr.Contractor prays that the impugned notice issued under Section 130 of the Act may be quashed and set aside and the goods and the conveyance shall be ordered to be released upon payment of the tax and penalty.

11. On the other hand, this writ application has been vehemently opposed by Ms.Manisha Lavkumar Shah, the learned Government Pleader appearing for the respondent. It is the say of the learned Government Pleader that the inter-state GST on the goods was 18%, whereas for intra-state transport the GST was 2%. Ms.Shah submitted that the materials on record *prima facie* indicates that the intention on the part of the writ applicant was to evade the payment of tax. In such circumstances, the authority can be said to be justified in issuing the show cause notice under Section 130 of the Act, calling upon the writ applicant to show cause as to why the goods and the conveyance should not be confiscated.

12. In such circumstances referred to above, Ms.Shah submitted that there is no merit in the writ application and the same may be rejected.

13. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the opinion that we should not interfere with the impugned show cause notice issued by the authority under Section 130 of the Act. We are of the view that the authority should be permitted to adjudicate the show cause notice in accordance with law. However, we deem fit to take into consideration the fact that the goods involved in the present litigation is a consignment of Tobacco and with the onset of monsoon the goods are likely to get damaged.

14. In such circumstances referred to above, we direct the writ applicant to deposit an amount of Rs.10,00,000/- (Rupees Ten Lacs only) with the concerned authority towards tax and penalty. To secure the interest of the State, we also direct the writ applicant to furnish Bank Guarantee of Rs.7,00,000/- (Rupees Seven Lacs only) that is the value of the goods. On deposit of the amount of Rs.10,00,000/- (Rupees Ten Lacs only) and furnishing of a Bank Guarantee to the tune of Rs.7,00,000/- (Rupees Seven Lacs only) of a nationalized bank, the authority concerned shall release the goods and the vehicle at the earliest. However, the adjudication with regard to the show cause notice under Section 130 of the Act shall continue. The deposit of bank guarantee shall abide by the final outcome after adjudication.

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

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

A. B. VAGHELA

