IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5273 of 2020

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M/S BHAWANI TEXTILES
Versus
ADDITIONAL DIRECTOR GENERAL

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Appearance:
MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2,3,4,5,6

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 04/03/2020

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 proprietary concern, through its proprietor, has prayed for the following reliefs:

> *"(a) To issue writ of or in the nature of a mandamus or any other appropriate writ, order or direction holding the proceedings initiated by respondent No.4 and respondent No.6 as bad and without authority of law and therefore quashed.*
>
> *(b) Pending admission, hearing and till final disposal of this petition, Your Lordships may be pleased*
>
> > *[a] to stay the proceedings initiated by respondent No.4 and respondent No.6*

[b] to direct the respondent No.3, respondent No.4, respondent No.5 and respondent No.6 from resorting to any coercive measure against the petitioner.

(c) To award costs of and incidental to this application be paid by the respondents;"

2 It appears from the materials on record that a search was carried out under Section 67 of the Central Goods and Services Tax Act, 2017 [for short, 'the CGST Act, 2017'] at the office premises of the writ applicant situated at the Udhana Udhyog Nagar, Udhana, Surat. A panchnama dated 3rd April 2019 came to be drawn of the search which was undertaken. It appears that one Shri Rajesh Kumar Ohlan, a Senior Intelligence Officer, Directorate General of Goods and Services Tax Intelligence, DGGI, Ahmedabad Zonal Unit, Ahmedabad carried out the search in the presence of two panch witnesses. The panchnama is annexed at Annexure : 'B' (page : 20 of the paper book). After the search was carried out, a summons came to be issued under Section 70(1) of the CGST Act, 2017 by the office of the Deputy Commissioner of State Tax. The writ applicant herein replied to the said summon by letter dated 7th February 2020. The reply reads thus:

"To,
Office of the Deputy Commissioner of State Tax,
Enforcement Div-9,
Bhavnagar.

Sub : Reply to the summon issued u/s. 70(1) of CGST Act, 2017 & u/s 70(1) of Guj GST Act, 2017

Ref: AC(1)/DIV-9/BVN/SUMMONS DT: 29/01/2020

Sir,

This with reference to the summons issued by your honour on 29/01/2020 on account of search conducted at my officer premises situated at godown No.A-18/6, Gala No.1, Rad No.7, Udhana Udhyog Nagar, Surat-394210 (Gujarat).

Under the said summon I was asked to provide my all books of accounts till date and to be present for statement on 12/02/2020 at 11.00 AM at your office in Ahmedabad. However, I had already informed your honor that all of my original books of accounts and documents had already been seized by the DGGI, Ahmedabad since 03/04/2019 on account of search conducted in Surat at my premises on 03/04/2019 by Shri Rajesh Kumar Ohlan, Senior Intelligence Officer, DGGI, Ahmedabad.

And I had already pledged every officers and offices/units/departments or by whatsoever name, that all my original books of accounts and documents had been seized by DGGI, Ahmedabad and I am left with no documents with me as of now.

I request your honor to please bear with me and accept this letter as my official reply to your summon issued and I also request you to kindly transfer my case to DGGI Ahmedabad so as to rely appear, submit documents and questionnaire at one plase as my case is already undergoing there. You may also confirm the same vide enclosed list of documents to your honor.

Kindly take note of the above and accept my request for transfer of case to one office so as to reply or appear before one department or office or by whatsoever called."

3 Thereafter, one another summons came to be issued dated 15th February 2020 under Section 70 of the CGST Act, 2017. The writ applicant once again replied to the said summons vide letter dated 17th February 2020. The reply reads thus:

"To,
The Superintendent /Appraiser/SIO,
DGGI, Surat Zonal, 4th floor,
White House, VIP Road,
Surat.

Sub : Reply to the summon issued u/s. 70 CGST Act

Ref: CBIC-DIN-202002DWW400007052A3

Sir,

This with reference to the summons issued by your honour on 15/02/2020 on account of enquiry conducted at my officer premises situated at godown No.A-18/6, Gala No.1, Rad No.7, Udhana Udhyog

Nagar, Surat-394210 (Gujarat).

Under the said summon I was asked to provide my all books of accounts from Jul-2017 to Jan-2020 and to be present for statement on 18/02/2020 at 12.00 PM at your office in Ahmedabad. However, I had already informed your honor that all of my original books of accounts and documents had already been seized by the DGGI, Ahmedabad since 03/04/2019 on account of search conducted in Surat at my premises on 03/04/2019 by Shri Rajesh Kumar Ohlan, Senior Intelligence Officer, DGGI, Ahmedabad.

And I had already pledged every officers and offices/units/departments or by whatsoever name, that all my original books of accounts and documents had been seized by DGGI, Ahmedabad and I am left with no documents with me as of now.

Also, I have been summoned on 29/01/2020 by the office of DCST (Enforcement), Div-9, Jilla Seva Sadan-2, Bhavnagar and I have duly submitted my reply to them as well.

I request your honor to please bear with me and accept this letter as my official reply to your summon issued and I also request you to kindly transfer my case to DGGI Ahmedabad so as to rely appear, submit documents and questionnaire at one plase as my case is already undergoing there. You may also confirm the same vide enclosed list of documents to your honor.

Kindly take note of the above and accept my request for transfer of case to one office so as to reply or appear before one department or office or by whatsoever called."

4 The grievance of the writ applicant herein is that the proceedings came to be initiated by the DGGI, AZU, Ahmedabad and therefore, the proceedings should be completed by the DGGI, AZU. In other words, the grievance of the writ applicant is that while the proceedings came to be initiated by the DGGI, AZU, Ahmedabad, the other authorities should not interfere with such proceedings already initiated.

5 In the aforesaid context, our attention has been drawn to a letter issued by the Central Board of Excise and Customs dated 5th October 2018. The same reads thus:

"LETTTER D.O.F. NO.CBEC/20/43/01/2017-GST(PT.)

CLARIFICATIONS ON AMBIGUITY REGARDING INITIATIONOF ENFORCEMENT ACTION BY CENTRAL TAX OFFICERS IN CASE OF TAXPAYERS ASSIGNED TO STATE TAX AUTHORITY AND VICE VERSA

LETTER D.O.F.NO.CBEC/20/43/01/2017-GST(PT), DATED 5-10-2018

It has been brought to the notice of the Board that there is ambiguity regarding initiation of enforcement action by the Central tax officers in case of taxpayer assigned to the State tax authority and vice versa.

2 In this regard, GST Council in its 9th meeting held on 16-1-2017 had discussed and made recommendations regarding administrative division of taxpayers and concomitant issues. The recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence based action is recorded at para 28 of Agenda note no.3 in the minutes of the meeting which reads as follows:-

> *"viii. Both the Central and State tax administrations shall have the power to take intelligence based enforcement action in respect of the entire value chain".*

3 It is accordingly clarified that the officers of both Central tax and State tax are authorized to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action.

4 In other words, if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its Sate tax counterpart and would themselves take the case to its logical conclusions.

5 Similar position would remain in case of intelligence based enforcement action action initiated by officers of State tax authorities against a taxpayer administrative assigned to the Central tax authority.

6 It is also informed that GSTN is already making changes in the IT system in this regard."

6 Thus, it appears that by way of instructions, it is clarified that if an

officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to the State tax authority, the officers of the Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions. In the case on hand, there is nothing on record to indicate that the officer of the Central tax authority has transferred the case of the writ applicant to any other authority of the State. However, it appears that although the action was undertaken under Section 67 of the Act by the DGGI, AZU, yet the two summons came to be issued: one by the Deputy Commissioner of State Tax and another by the DGGI, Surat.

7 We dispose of this writ application with a direction to the DGGI, AZU, Ahmedabad to look into the matter and ensure that no undue harassment is caused to the writ applicant by different authorities on the same subject matter. We clarify that we have otherwise not expressed any opinion on the merits of the case. We dispose of this writ application with the limited observations. Direct service is permitted.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

CHANDRESH