

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 5172 of 2020**

UNIVERSAL SCRAP AND METALS

Versus

STATE OF GUJARAT

Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1

for the Respondent(s) No. 2

MR SOAHAM JOSHI, AGP for the Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 26/02/2020

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 or order quashing and setting aside impugned detention order dated 4.2.2020 (annexed at Annexure A) passed by the 2nd Respondent authority;

B. This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ or order quashing and setting aside impugned confiscation notice dated 12.2.2020 (annexed at Annexure-B) issued by the 2nd Respondent authority;

C. This Hon'ble Court may be pleased to issue a writ or mandamus or a writ in nature of mandamus or any other appropriate writ or

order directing the Respondents to forthwith release truck number GJ-12-AT-5223 along with the goods contained therein;

D. Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to direct the Respondents to forthwith release truck number GJ-12-AT-5223 along with the goods contained therein and further proceedings pursuant to impugned confiscation notice dated 12.2.2020 (annexed at Annexure B) may please be stayed;

E. Ex parte ad interim relief in terms of prayer D may kindly be granted;

F. 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. It appears from the materials on record that the writ-applicant is seeking to challenge the legality and validity of the confiscation notice dated 12.02.2020 issued in Form GST-MOV-10, under Section 130 of the Central/Gujarat Goods and Services Tax Act, 2017 (for short 'the Act, 2017').

3. The writ-applicant claims to be the owner of the goods. It is the case of the writ-applicant that the goods and the conveyance came to be detained and seized by the GST Authorities on the premise that the goods were being transported in contravention of the Act and Rules.

4. As the matter is at the stage of GST-MOV-10, we would not like to enter into the merits of the matter. The first concern for the writ-applicant should be to get the goods released.

5. Since the matter is at the stage of GST-MOV-10, the application preferred by the writ-applicant [Annexure-I, Page No.44 of the paper-book] shall be treated as one in terms of Section 67(6) of the Act.

6. According to Mr.Sheth, the learned counsel appearing for the writ-applicant, no order has been passed in the application, preferred by his client under Section 67(6) of the Act.

7. We dispose of this writ-application with a direction to the State Tax Officer, Morbi Squad, Enforcement, Division-9, Bhavnagar to immediately look into the application, preferred by the writ-applicant [Annexure-I, Page No.44 of the paper-book] and pass appropriate order, in accordance with law. Let this exercise be undertaken and complied within a period of one week from the date of receipt of the writ of this order.

8. The general principles governing the provisions of Sections 129 and 130 of the Act have been exhausted by this Court in the case of **F S Enterprise Vs. State of Gujarat** [Special Civil Application No.7061 of 2019], decided on 11.10.2019.

9. Keeping the aforesaid in mind, the authority concern shall now proceed to pass an appropriate order, in accordance with law.

10. It shall be open for the writ-applicant to make

his case good before the authority for both, discharge of notice in GST-MOV-10 as well as release of goods, in exercise of powers under Section 67(6) of the Act.

Direct service is permitted.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

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