IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 22211 of 2019

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M/S SAWARIYA TRADERS
Versus
STATE OF GUJARAT
==
Appearance:
MR MONAL S CHAGLANI(10240) for the Petitioner(s) No. 1,2
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the Respondent(s) No. 1
MR ANKIT SHAH(6371) for the Respondent(s) No. 4
NOTICE SERVED(4) for the Respondent(s) No. 2,3
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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-applicants have prayed for the following reliefs :

> *"(a) Certiorari quashing the Mov-10 (Notice for confiscation dated 23.09.2019 (Annexure D to the writ petition)*
>
> *(b) Certiorari quashing the Circular Circular No. 41/15/2018-GST, dated April 13, 2018*
>
> *(c) Mandamus directing the respondent no.3 to forthwith release the goods and vehicle without demanding any security.*
>
> *(d) Issue any other writ, Order or Direction in favour of the petitioner which this Hon'ble Court deems fit in the facts and circumstances of the case.*

(e) Award cost of the petition to the petitioner."

2. On 17th December 2019, this Court passed the following order :

"1. Mr. Samir Gupta, learned advocate with Mr. Monal Chaglani, learned advocate for the petitioners invited the attention of the court to the order of detention made under section 129(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') and other statutes to submit that the same is totally silent as regards the discrepancy noticed after the physical verification of the goods and conveyance. Referring to the notice issued under section 130 of the CGST Act in Form GST MOV-10, it was pointed out that the grounds set out therein have got nothing to do with the goods which were in transit. It was submitted that there is no allegation as regards any contravention in respect of the goods in transit. Reference was made to section 130 of the CGST Act to point out that the same contemplates five contingencies in which the action can be taken thereunder. It was submitted that, in the impugned notice, it has not been specified as to which of the five clauses of sub-section (1) of section 130 of the CGST Act has been infringed in the present case. It was further submitted that notice under section 130 of the CGST Act has to be issued to the person who contravenes the provisions of the CGST Act whereas, in the facts of the present case, such notice has been issued to the driver, who would not be the proper person to answer such show-cause notice.

*2. Having regard to the submissions advanced by the learned advocate for the petitioners, issue **Notice,** returnable on **20th December 2019**.*

> ***Direct service*** *is permitted* ***today****. The petitioners are permitted to serve the respondents directly through Speed-post at their own cost.”*

3. It appears from the materials on record that the writ-applicant No.1 is the owner of the goods (Arecanut). On the other hand, the writ-applicant No.2 is the owner of the vehicle. The writ-applicant No.1 is a registered dealer under the GST. The writ-applicant No.2 had given his vehicle on rental basis to the transporter for transportation of the goods referred to above. While the goods where in transit, the GST authorities detained and seized the goods as well as the vehicle on the ground that the goods were being transported in contravention of the provisions of the Act and the Rules. The position as on date is that the goods as well as the vehicle is in custody of the GST Authorities. A show cause notice in form GST MOV-10 has been issued.

4. In such circumstances, we permit the writ-applicants to prefer an appropriate application addressed to the authority concerned under Section 67(6) of the Act for provisional release of the goods and the conveyance. If such application is filed, the

authority concerned shall immediately look into the same and pass an appropriate order within one week from the date of receipt of such application.

5. So far as, the challenge to the form GST MOV-10 is concerned, the writ-applicant shall file an appropriate reply and make good his case that the notice in the form GST MOV-10 deserves to be discharged.

6. It shall be open for the writ-applicant to place reliance on the recent pronouncement of this Court in the case of ***Synergy Fertichem Pvt. Ltd. vs. State of Gujarat*** decided on **23.12.2019** in ***Special Civil Application No.4730 and allied matters***.

7. With the above, this writ-application stands disposed of. Notice is discharged.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

KUMAR ALOK