**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 7318 of 2019**

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M/S MAHALAXMI REXINE AND METAL TRADERS
Versus
STATE TAX OFFICER (2)
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Appearance:
MR D K TRIVEDI(5283) for the Petitioner(s) No. 1,2
MR.SOAHAM JOSHI, ASSISTANT GOVERNMENT PLEADER(1) for the Respondent(s) No. 1,2
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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**
and
**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**Date : 19/02/2020**

**ORAL ORDER**
**(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

1. **Rule** returnable **forthwith.** Mr.Soaham Joshi, the learned Assistant Government Pleader waives service of notice of rule for and on behalf of the respondents.

2. By this writ-application, the writ-applicants have prayed for the following relief(s):-

> "8*(A) Your Lordships may be pleased to admit this petition.*
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> *(B) Your Lordships may be pleased to allow this petition.*
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> (C) *Your Lordships may be pleased to issue writ of mandamus or any other appropriate writ directing the respondent no.1 to immediately release the transport vehicle (Truck No.TN-52-B 8335) along with the goods loaded in it and hand it over to the*

*driver of the truck, from whose possession it was seized.*

*(D) Your Lordships may be pleased to issue writ of mandamus or any other appropriate writ quashing and setting aside notice in Form GST MOV-10 annexed at Annexure-D herein above and order in FOR GST MOV-11 annexed at Annexure- 'H' herein above.*

*(E) Your Lordships may be pleased to grant such other and further relief/s that may be deemed fit and proper in the interest of justice in favour of the petitioner."*

3. This writ-application is at the instance of a proprietary concern through its proprietor. The writ-applicant is engaged in the business of trading in metal scrap. The writ-applicant is registered under the provisions of the Gujarat Goods & Service Tax Act-2017 (for short the "Act-2017"). According to the case of the writ-applicant, he had supplied goods from his registered premises situated at Jamnagar. The said goods were transported in the vehicle which is owned by the writ-applicant no.2 herein. The writ-applicant no.2 is also a proprietary concern.

4. It is the case of the writ-applicants that the goods were accompanied by tax invoice, LR etc., however, the E-way Bill could not be produced at the time of seizure of the goods. The failure on the part of the driver of the conveyance in producing the E-way bill ultimately led to proceedings under Section 129 of the Act, and thereafter, the confiscation proceedings.

5. As on date, the subject matter of challenge is

the final order of confiscation passed by the authority concerned in the FORM GST MOV-11.

6. On 12.04.2019, the Coordinate Bench of this Court passed the following order:-

> "1. Mr. D. K. Trivedi, learned advocate for the petitioners inter alia submitted that initially the petitioners were called for hearing in respect of the notice under section 130 of the Central Goods and Services Tax Act, 2017 read with the relevant provision of the other statutes on 5.4.2019. The attention of the court was invited to Annexure-G to point out that the petitioners had filed their reply dated 4.4.2019 which was duly received by the authority on 5.4.2019. It was submitted that however, the concerned authority was not available on that date, and hence, the matter could not be heard. It was submitted that the petitioners were told that the hearing would take place on 8.4.2019, however, the impugned order has been passed on 5.4.2019 in breach of the principles of natural justice.
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> 2. Having regard to the submissions advanced by the learned advocate for the petitioners, Issue Notice and Notice as to interim relief, returnable on 15th April, 2019. On the returnable date, the respondents shall state as to on what date, an opportunity of hearing in connection with the notice under section 130 of the CGST Act was granted to the petitioners.
>
> Direct service is permitted today."



7. Thereafter, on 18.04.2019, the Coordinate Bench passed by the following order:-

> "1. Leave to amend the cause title by impleading the State of Gujarat, through the Commissioner of Commercial Tax, Rajya Kar Bhavan, Ashram Road, Ahmedabad as the second respondent.
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> 2.On 12.4.2019, this court passed an order in the following terms:

“1. Mr. D. K. Trivedi, learned advocate for the petitioners inter alia submitted that initially the petitioners were called for hearing in respect of the notice under section 130 of the Central Goods and Services Tax Act, 2017 read with the relevant provision of the other statutes on 5.4.2019. The attention of the court was invited to Annexure-G to point out that the petitioners had filed their reply dated 4.4.2019 which was duly received by the authority on 5.4.2019. It was submitted that however, the concerned authority was not available on that date, and hence, the matter could not be heard. It was submitted that the petitioners were told that the hearing would take place on 8.4.2019, however, the impugned order has been passed on 5.4.2019 in breach of the principles of natural justice.

2. Having regard to the submissions advanced by the learned advocate for the petitioners, Issue Notice and Notice as to interim relief, returnable on 15th April, 2019. On the returnable date, the respondents shall state as to on what date, an opportunity of hearing in connection with the notice under section 130 of the CGST Act was granted to the petitioners.

Direct service is permitted today.”

3.Heard Mr. D. K. Trivedi, learned advocate for the petitioner and Mr. Utkarsh Sharma, learned Assistant Government Pleader for the respondents.

4.A perusal of the original file of the concerned officer in relation to the proceeding which has culminated into an order of confiscation under section 130 of the Central Goods and Services Tax Act / Gujarat Goods and Services Tax Act, 2017 reveals that the noting sheet is totally blank. There is nothing on record to indicate relevant dates on which the proceedings took place. Considering the fact that this is a file maintained by a Government authority, it is difficult to understand as to how there are no notings with regard to the proceedings undertaken by the concerned officer. Under the circumstances, stand over to 24th April, 2019 to enable the respondents to file an affidavit-in-reply.

> 5. Notice be issued to the newly added respondent, returnable on 24th April, 2019. On the returnable date, the second respondent shall inform this court about as to what is the practice of making notings of the proceedings conducted by the State Tax Officers.
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> Direct Service is permitted today.
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> A copy of this order be furnished to the learned Assistant Government Pleader for doing the needful in the matter."

8. Lastly, on 09.05.2019, the Coordinate Bench of this Court passed following order:-

> "1. Heard Mr. D.K. Trivedi, learned advocate for the petitioners and Mr. Utkarsh Sharma, learned Assistant Government Pleader for the respondents.
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> 2.In this case, the petitioners have already paid the amounts of tax and penalty as computed by the respondents. Under the circumstances, the respondents shall release the detained goods as well as the conveyance, subject to each of the petitioners filing a solemn undertaking before this court to the effect that the petitioners shall make good the deficit liability, if any, as may be determined finally by the authorities for the goods as well as for the vehicle/s subject to the petitioners' right to challenge the same in accordance with law. For release of the goods and the vehicle/s, the petitioners shall also submit before the concerned authority proof of payment of above referred amounts and also a copy of the solemn undertaking filed in this court as well as documents, namely, PAN card and Aadhar card / Election card for identification of the petitioners and addresses of the petitioners.
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> 3.Stand over to 19th June, 2019. Direct service is permitted."

9. We take notice from the order passed by the Coordinate Bench dated 18.04.2019 that the original file of the concerned officer was also called for the purpose of perusal. On perusal of the original file,

the Coordinate Bench noticed that the noting sheet was completely blank. The Coordinate Bench further noticed that there was nothing on record to indicate the relevant date on which the proceedings took place.

7. Be that as it may, the short point today for our consideration is whether the writ-applicant could be said to have been given a reasonable opportunity of hearing by the authority concerned before passing the final order of confiscation in Form MOV-11.

8. Our attention has been drawn to the impugned notice more particularly, Page No.30 of the paper-book. It is evident from the Paragraph No.7 therein that the writ-applicant was directed to appear before the authority concerned on 05.04.2019 at 11.00 a.m. Despite the same, the impugned order came to be passed on the very same day i.e. 05.04.2019 on which the writ-applicant was supposed to remain present for the purpose of hearing. On this short ground alone, we are inclined to quash the impugned order of confiscation passed by the authority concerned in Form GST-MOV-11.



9. In the result, this writ-application succeeds and is hereby allowed. The impugned order in the Form GST-11 is hereby quashed and set-aside. The matter is remitted to the respondent no.1 for fresh adjudication. The respondent no.1 shall issue notice to the writ-applicant for the purpose of giving an opportunity of hearing. On the date fixed by the

respondent no.1, the writ-applicants shall remain present and make good his case.

10. With the above, this writ-application stands disposed of. Let this exercise be completed within a period of four weeks from the date of receipt of the writ of this order.

Direct service is permitted.

**(J. B. PARDIWALA, J)**

**(BHARGAV D. KARIA, J)**

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