# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CIVIL APPLICATION (FOR ORDERS) NO. 2 of 2020**
**In R/SPECIAL CIVIL APPLICATION NO. 728 of 2020**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE J.B.PARDIWALA**

**and**
**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

==========================================================

| | | |
|---|---|---|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | |
| 2 | To be referred to the Reporter or not ? | |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | |

==========================================================

ABB INDIA LIMITED
Versus
UNION OF INDIA

==========================================================

Appearance:
LD.ADV.MR SUJIT GHOSH & LD. ADV. MISS MANNAT WARICH FOR GUPTA LAW ASSOCIATES for the PETITIONER(s) No.
for the RESPONDENT(s) No.
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the RESPONDENT(s) No.

==========================================================

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

**Date : 11/02/2020**

**IA JUDGMENT**
**(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

1. **Rule**, returnable forthwith. Mr.Ankit Shah, the learned standing counsel waives service of notice of rule for and on behalf of the opponent Nos.1 to 4 and Mr.Soaham Joshi, the learned Assistant Government Pleader waives service of notice of rule for and on behalf of the opponent No.5.

2. By this application, the applicant-original petitioner has prayed for the following reliefs:

> "A. Your Lordship be pleased to admit and allow the application;
>
> B. Pending hearing and final disposal of the main petition, Your Lordship may be pleased to stay the Notices issued in Form GST MOV-10 received by the Applicant on 05.02.2020.
>
> C. Your Lordship be pleased to pass any such other orders that may be deemed fit, just and proper in the interest of justice."

3. In the main matter, i.e. Special Civil Application No.728 of 2020, this Court, on 10.01.2020, has passed the following order:

> *"1. Rule returnable on 12/02/2020. Mr. Chintan Dave, the learned AGP waives service of notice of rule for and on behalf of the respondents nos.2, 3, and 5. The respondents nos.1 and 4 shall be served by Registered Post Acknowledgment with Due.*
>
> *2. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the writ-applicant has made out a strong primafacie case to have some interim order in its favour.*

*3. There are many larger issues, which have been raised for the purpose of adjudication of this Court. Today, we are concerned with the issue whether we should order release of the goods and the conveyance detained and seized by the GST authority.*

*4. We take notice of the fact that there are in all four vehicles involved in this matter. The goods are in the nature of electrical goods. It appears that a notice under Section129(3) of the Act I.e.GST-MOV-07 came to be issued calling upon the writapplicant to appear before the authority concerned on 31st December 2019.*

*5 The learned counsel appearing for the writapplicant brings to our notice that yesterday his client has received the order in GSTMOV09. The total liability towards the tax and penalty plus interest as fixed comes to around Rs.1,00,81,944/.*

*6. The legal issues, which have been raised by the learned counsel appearing for the writ-applicant shall be heard and decided on the returnable date. However, we are inclined to pass an interim order for the release of the goods and the vehicles. We direct the writ-applicant to deposit an amount of Rs.50,40,972/towards the tax with the respondent no.2 and the balance amount of Rs.50,40,972/towards the penalty shall be in the form of a bank guarantee of any nationalized bank. On deposit of the requisite amount and the bank guarantee, the authority concerned shall release the goods and the vehicles forthwith.*

*Direct service is permitted."*

4. The subject matter of challenge in the main matter is the notice, issued by the authority, under Section 129(3) of the Act i.e. Form GST-MOV-07 as well as the order passed by the authority in Form

GST-MOV-09.

5. By way of an ad-interim-order, we directed the applicant herein to deposit an amount of Rs.50,40,972/- towards tax, with the respondent No.2 and an amount of Rs.50,40,972/- towards the penalty, in the form of the Bank Guarantee of any Nationalized Bank.

6. It is not in dispute that our order, dated 10.01.2020, has been fully complied with by the applicant herein. However, surprisingly, a notice dated 5th February, 2020, in Form GST-MOV-10, came to be issued. In all, four separate notices, in Form GST-MOV-10, came to be issued for four different vehicles.

7. We find one such notice, in Form GST-MOV-10, at page No.58 of the application, wherein, in paragraph No.4, the following has been stated:

> *"Subsequently, after observing the principles of natural justice, an order demanding the applicable tax and penalty was issued in FORM GST MOV-09 on 09.01.2020 and the same was served on I) Shri Kapil Thapa, the person in charge of the conveyance and ii) Shri Kuldip Singh Lamba (Authorized person of M/s ABB India Limited). Being aggrieved by the order in GST MOV-09 dated 09.01.2020 issued by the Assistant Commissioner (Preventive), CGST HQ, Kutch Commissionerate, Gandhidham. The Hon'ble High Court of Gujarat passed an interim order in tis case on dated 10.01.2020, without giving any stay and issued only direction to the petitioner as well as to the department as stated in Para 6 of the order dated 10.01.2020*

*whrein Hon’ble Court has directed the petitioner to deposit an amount of Rs.50,40,972/- towards tax and the balance amount of Rs.50,40,972/- towards the penalty in the form of Bank Guarantee and on compliance of the said department is required to release the goods and vehicles. Whereas, Section 129(6) of the Central/State Goods and Services Tax Act, 2017, states: Whether the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) withing fourteen days of such detentions or seizure, further proceedings shall be initiated in accordance with the provisions of section 130. Accordingly, in view of the Section 129(6) of the CGST Act, 2017, M/s. ABB India Limited had to comply with the directions given in the instant case by the Hon’ble High Court of Gujarat in their interim order, by 14.01.2014 (being fourteen day of issuance of the order of detention in GST MOV-06 dated 31.12.2019.) However, Shri Rajneesh B. Kulkarni, Authorized Signatory of M/s. ABB India Limited come forward on 24.01.2020 and submitted a letter dated 24.01.2020 attached therewith a copy of GSTR3B as proof of payment of Tax amounting to Rs.50,40,972/- made on 20.01.2020 and furnished a Bank Guarantee No.0419620BG0000007 dated 22.01.2020 for the amount of Rs.50,40,972/-. As such, for compliance of the interim order passed by the Hon’ble High Court of Gujarat in the instant case, the goods along with the vehicles were released proisionally on 24.01.2020. M/s.ABB India Limited had four days to comply with the directions given by the Hon’ble Court i.e. upto 14.01.2020, as fourteen days from the date of issuance of the order of detention in FORM GST MOV-06, dated 31.12.2019 was going to expire on 14.01.2020. However, neither the owner of the goods nor the person in charge of the conveyance made the payment of applicable tax and penalty within the time allowed in the order passed supra.”*

8. It appears that the authority concerned througly misconstrued our order dated 10.01.2020. The whole

basis of issuing Form GST-MOV-10 appears to be erroneous in law. The authority has thought fit to proceed against the applicant by way of Form GST-MOV-10, on the premise of Section 129(6) of the Act, 2017. Section 129(6) of the Act, 2017 reads thus:

> *"Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:*
>
> *Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer."*

9. The understanding of the authority is that since the notice under Section 129(3) of the Act is dated 31st December, 2019, the applicant ought to have deposited the amount, towards tax and penalty, within 14 days thereof, and the failure, to deposit such amount, would entail the consequences of notice in Form GST-MOV-10.

10. We may only say that there is no question of looking into Section 129(6) of the Act, more particularly, when this Court has passed a specific order dated 10th January, 2020. We fail to understand on what basis the period of 14 days came to be calculated for the purpose of issuing GST-MOV-10.

11. Besides the above, we take notice of the fact

that except Section 129(6) of the Act, there is no other ground for the purpose of issuing notice in Form GST-MOV-10. If that be the case, then we have no hesitation in quashing the Form GST-MOV-10 notice straight way.

12. In the result, this application succeeds and is hereby allowed. The impugned notices, issued in Form GST-MOV-10, dated 05.02.2020, are hereby quashed and set aside. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

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

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

PALAK