

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16994 of 2019**=====
KATARIA AUTOMOBILES PVT. LTD.

Versus

STATE OF GUJARAT
=====

Appearance:

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

for the Respondent(s) No. 2

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the
Respondent(s) No. 1
=====CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**

and

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 03/10/2019****ORAL ORDER****(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. Mr. Uchit Sheth, learned advocate for the petitioner, has submitted that while admittedly, the goods in question were not accompanied by an invoice or e-way bill during the course of transport, the goods are valued at less than Rs.50,000/- and hence, there was no necessity of providing an e-way bill. It was submitted that the goods in question are second hand goods and hence, the value of such supply is required to be determined in terms of Rule 32 of the Central Goods and Services Tax Rules, 2017 and more particularly, sub-rule (5) thereof, which provides that where a taxable supply is provided

by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored. It was submitted that in the present case, the petitioner has already deposited the amount of tax and penalty, as computed under Rule 32(5) of the said Rules. It was submitted that the petitioner is not a fly by night operator and despite the petitioner having put forward a proper explanation, the respondents have still proceeded under section 130 of the Central Goods and Services Tax Act, 2017 and initiated proceedings for confiscation of the goods.

2. Having regard to the submissions advanced by the learned advocate for the petitioner, issue Notice, returnable on 23.10.2019.

By way of ad-interim relief, the respondents are directed to release the vehicle bearing registration No. RJ-09-GA-6703 along with the goods contained therein subject to the petitioner filing an undertaking that in case if, ultimately, it does not succeed in the

proceedings, it shall deposit the balance amount payable, as may be computed by the respondent authorities, which shall be without prejudice to the right of the petitioner to challenge any adverse order that may be passed. Direct service is permitted.

(HARSHA DEVANI, J)

(SANGEETA K. VISHEN, J)

PRAVIN KARUNAN

