

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11310 of 2019

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MOHMMAD HANIF MOHMMAD ISMAIL SHAIKH

Versus

COMMISSIONER STATE TAXES

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Appearance:

MR NK MAJMUDAR(430) for the Petitioner(s) No. 1

NOTICE SERVED BY DS(5) for the Respondent(s) No. 1,2

MS MAITHILI MEHTA, AGP for the Respondents - State

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR.JUSTICE A.C. RAO

Date : 25/07/2019

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1.00. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following main relief :-

“8(B). Issue appropriate writ, order or direction quashing and setting aside the action of applying seal to the premises of the petitioner i.e. principal place of business of the petitioner and the respondents authorities may be directed to open the seal to the premises of the petitioner i.e. principal place of business of petitioner at the earliest on such terms and conditions as may be deemed fit and proper by this Hon'ble Court.”

2.00. It appears from the materials on record that the writ applicant is engaged in the business of scrap. The writ applicant is carrying on business in the name and style of M/s. Nisha Scrap Traders. The writ applicant is the proprietor of the proprietary concern. The writ applicant is registered under the Gujarat Goods and Services Tax Act, 2017. It appears that proceedings have been initiated by the competent authority for confiscation of the goods stored in the warehouse of the writ applicant. It also appears that the criminal prosecution has been instituted and the two brothers of the writ applicant as on date are in judicial custody.

2.01. The grievance redressed in this writ application is that the authorities have affixed a seal on the warehouse. According to Mr.Majmudar, the learned counsel appearing for the writ applicant, under section 67 of the Act, if the proper officer or the competent authority has reason to believe that any goods are liable to confiscation or any document or books or things, which in his opinion may be useful or relevant to any proceeding under the Act and if there is likelihood that the goods or any documents or books or things may be secreted to any place or have been secreted, then, proper officer may authorise in writing any other officer to search and seize or may himself search and seize such goods, documents or books or things. However, according to Mr.Majmudar, there was no good reason for the authorised officer to affix seal on the warehouse. The submission of Mr.Majmudar is that an appropriate order could have been passed restraining the writ applicant from removing the goods or any other articles like books of accounts etc. from the premises in question.

3.00. On the other-hand, this writ application has been vehemently opposed by Ms.Maithali Mehta, learned counsel appearing for the respondents. Ms.Mehta submitted that the officer authorised under sub-section (2) of section 76 of the Act has the power to affix seal. Ms.Mehta, pointed out that the criminal prosecution has been initiated and the two brothers of the writ applicant as on date are in judicial custody. According to Ms.Mehta, no illegality could have been said to have been committed in the action taken by authorised officer.

4.00. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we propose to dispose of this writ application with a liberty to the writ applicant to make appropriate application under section 76(6) of the Act for the release of the goods so seized on the provisional basis upon execution of a bond and furnishing of a security. We order accordingly. If such an application is preferred by the writ applicant, the competent authority shall look into the same and pass appropriate order in accordance with law. With the above, this writ application is disposed of.

Direct Service is permitted.

sd/-

(J. B. PARDIWALA, J)

sd/-

(A. C. RAO, J)

RAFIK.