

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16599 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS.JUSTICE HARSHA DEVANI****Sd/-****and****HONOURABLE DR.JUSTICE A. P. THAKER****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

M/S PALAK DESIGNER DIAMOND JEWELLERY

Versus

UNION OF INDIA

Appearance:

MR HARDIK P MODH(5344) for the PETITIONER(s) No. 1

MR NIRZAR S DESAI(2117) for the RESPONDENT(s) No. 1,2,3

CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE DR.JUSTICE A. P. THAKER**Date : 29/01/2019****ORAL JUDGMENT****(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. Rule. Mr. Nirzar Desai, learned Senior Standing Counsel waives service of notice of rule on behalf of the respondent.
2. By this petition, the petitioner has challenged the validity of the seizure orders dated 11/12.1.2018 and 14/15.3.2018

and seeks a direction to the respondent to forthwith allow provisional release of the goods seized under the seizure memos dated 11/12.1.2018 and 14/15.3.2018.

3. At the outset, Mr. Hardik Modh, learned advocate for the petitioner submits that he is pressing this petition only for the prayer for provisional release of the goods and does not press for any other relief at this stage.

4. The petitioner herein is engaged in the manufacture of jewellery from gold, diamond and precious metals on its own account as well as on job work basis and claims to be having substantial income from job work. Search came to be carried out at the factory premises of the petitioner on 11.1.2018 under section 67 (2) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as "the CGST Act") to ascertain whether the petitioner had paid GST in terms of the provisions of that Act.

4. During the course of search, the officers seized the excess stock of finished goods under seizure memo dated 11.1.2018 and handed over the seized goods under sealed cover to Shri Rajubhai N. Patel, partner of the petitioner, to keep the same in safe custody with a direction not to tamper with the same without the permission of the respondents. The petitioner requested the Additional Commissioner of Anti Evasion, GST and Central Excise, to provisionally release the finished goods which belonged to the principal suppliers and had to be returned at the earliest.

5. The officers of the third respondent, once again visited the office of the petitioner on 23.1.2018 to ascertain the value of the seized goods along with an approved valuer, who valued the seized goods at Rs.4,10,68,644/- and, thereafter, sealed such goods.

6. By a letter dated 24.1.2014, the petitioner informed the respondent that they had paid appropriate amounts of CGST and SGST on the seized goods and penalty equal to 15% of CGST and SGST under the provisions of section 74 (5) of the Act and requested the release of the goods in terms of the provisions of section 67 (6) of the CGST Act.

7. On 14/15.3.2018, the respondents once again searched the premises of the petitioner and seized all the raw materials and finished goods lying on the first, second and third floors under the seizure memo dated 14/15.3.2018. *Vide* letter dated 13.3.2018, the petitioner requested the respondents to release the goods as they had paid GST at the appropriate rate under the Act along with penalty.

8. Thereafter, the petitioner furnished various documents from time to time and *vide* letter dated 29.5.2018 provided the reasons as to why the goods were not required to be seized, *inter alia*, stating that the petitioner being a job worker was not responsible for payment of GST on the value of supply of goods and that it was liable to pay GST only on job work charges.

9. *Vide* letter dated 19.6.2018, the competent authority extended the period of seizure in terms of section 67 (7) of the CGST Act for a further period of six months. Since the

respondents failed to provisionally release the seized goods causing immense hardship to the petitioner, it has filed the present petition seeking the relief noted herein above.

10. Mr. Hardik Modh, learned advocate for the petitioner, invited the attention of the Court to the provisions of section 67 of the CGST Act and, more particularly, sub-section (6) thereof, which provides that, "the goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be". Referring to the letter dated 20.3.2018 of the petitioner addressed to the Deputy Commissioner, Anti Evasion, it was pointed out that the petitioner has paid chalan of Rs.14,16,868/- and had credit of SGST in the electronic credit ledger amounting to Rs.7,90,793/- as on 20.3.2018. It was submitted that the credit of CGST in the electronic cash ledger has been reversed on 28.1.2019. It was submitted that the petitioner can also provide bank guarantee or bond for removal of the goods seized. Referring to the show cause notice dated 8.1.2019, it was pointed out that in paragraph 75 (ii) thereof, the respondents have computed the total amount of tax payable on the seized goods at Rs.46,75,791/-. It was submitted that, at best the penalty thereon would come to Rs.23 lakhs and, therefore, the total amount would come to approximately Rs.70 lakhs. It was submitted that since the goods are still lying with the respondent no interest would be payable thereon. It was submitted that the petitioner having already paid Rs.14,16,868/- and having reversed credit of Rs.7,90,793/-, the

respondents may be directed to provisionally release the seized goods upon the petitioner furnishing a bank guarantee of Rs.50 lakhs.

11. On the other hand, Mr. Nirzar Desai, learned Senior Standing Counsel for the respondent submitted that, in terms of the show cause notice, the total proposed demand comes to around Rs.13 crores, and, hence, the relief claimed in the petition may not be granted and, if the Court is inclined to grant the relief as prayed for, the petitioner may be directed to furnish the bank guarantee of at least Rs.1 crore.

12. This Court has considered the submissions advanced by the learned advocates for the respective parties. The petitioner has prayed for provisional release of seized goods under sub-section (6) of section 67 of the CGST Act, which lays down that the goods seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be. The manner has been prescribed under rule 140 of the CGST Rules, 2017 which provides that the seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in FORM GST INS-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

13. Thus the respondents are duly empowered to provisionally release the seized goods, if the requirements of section 67 (6) of the CGST Act read with rule 140 of the CGST

Rules are satisfied.

14. It is an admitted position that in terms of the show cause notice, the total amount of tax payable on the seized goods, totally valued at Rs.15,58,59,711/- is Rs.46,75,791/-. Adding 50% towards penalty, the total amount would come to approximately Rs.70 lakhs. The petitioner has already deposited Rs.14,16,868/- by way of challan and has reversed credit of SGST to the tune of Rs.7,90,793/-, which comes to approximately Rs.22 lakhs. Under the circumstances, if the petitioner furnishes bank guarantee of Rs.50 lakhs and a bond for the value of the goods in FORM GST INS-04, the interest of justice would be served.

14. In the light of the above discussion, without entering into the merits of the controversy, the petition is partly allowed in the following terms.

14.1 The respondents No.2 and 3 are directed to forthwith provisionally release the seized goods of the petitioner under sub-section (6) of section 67 of the CGST Act, upon the petitioner executing a bond in FORM GST INS-04 for the total value of the seized goods, and furnishing a bank guarantee of Rs.50 lakhs.

15. Rule is made absolute to the aforesaid extent.

Sd/-
(HARSHA DEVANI, J)

Sd/-
(A. P. THAKER, J)

R.S. MALEK