

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15337 of 2021
With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 15337 of 2021

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A K ENTERPRISE
Versus
STATE OF GUJARAT

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Appearance:

MR ASHUTOSH S DAVE(8865) for the Petitioner(s) No. 1
MR JIGAR G GADHAVI(5613) for the Petitioner(s) No. 1
for the Respondent(s) No. 2
MR UTKARSH SHARMA AGP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE
Date : 03/02/2022

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

1. By this writ application under Article 226 of the Constitution of India, the writ applicant – a dealer under the GST has prayed for the following reliefs:

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- (a) Quash and set aside impugned orders and show cause notice under Forms MOV-06, MOV-10 and MOV-11 dated 23.09.2021 and 07.10.2021 respectively passed by the Respondent no.2 at Annexure “A” and “A1” to this petition and further be pleased to direct the Respondent no.2 to release the goods in question and the conveyance bearing registration no.GJ37 T 8745 which was intercepted at Kamrej, Surat forthwith.*
- (aa) Pending notice, admission and final hearing of this petition, the Hon’ble Court may be pleased to stay the operation, implementation and execution of the confiscation order dated 07.10.2021 passed by the Respondent no.2 at Annexure “A1” to the petition.*
- (b) Pending notice, admission and final hearing of this petition, this Hon’ble Court may be pleased to direct the*

Respondent no.2 to forthwith release the goods in question along with conveyance bearing No.GJ37 T 8745 detained/seized in purported exercise of powers under Sections 68, 129 and 130 of the Act.

- (c) *Such other and further reliefs which the Hon'ble Court deems fit in the interest of justice*
- (d) *To award the cost of the petition."*

2. The writ applicant herein appears to be the owner of the goods which came to be seized and now finally confiscated under Section 130 of the GST Act, 2017.

3. We take notice of the fact that there is a Civil Application filed by Mr. Vin, the learned counsel appearing for the applicant of the said application. This applicant is the owner of the conveyance. The owner of conveyance would like to get himself impleaded in the main matter, so that he can also question the illegality and validity of the final order of confiscation passed by the Authority in the form of GST MOV – 11.

4. The impugned order passed by the respondent No.2 under Section 130 of the GST Act in MOV-11 reads thus:

"The vehicle no. GJ37 T 8745 was intercepted on 23rd September 2021 at 10:25 a.m. at Kamrej toll plaz, MOV 10 was issued on 23rd September 2021.

Dealer is unable to prove the genuineness of the purchase as no proof of movement of goods purchased by the seller in this transaction are produced. Hence, it seems only bill was purchased and not goods. Hence, order under Section 130 of the SGST Act has been passed. The dues mentioned above are to be paid by 23rd September 2021.

N.S. Trivedi
State Tax Officer(2)
MOBILE SQUAD, ENF-7, SURAT."

5. Mr. Ashutosh J. Dave, the learned counsel appearing for the writ applicant vehemently submitted that the impugned order passed by the respondent No.2 in MOV – 11 confiscating the goods as well as the conveyance is a non-speaking order. It is in such circumstances, that the writ applicant though fit to invoke the writ jurisdiction of this Court under Article 226 of the Constitution rather than filing of an appeal before the Appellate Authority under Section 107 of the Act.

6. Mr. Utkarsh Sharma, the learned AGP appearing for the respondent, while opposing the present writ application as well as the connected Civil Application submitted that the impugned order of confiscation makes it clear that the dealer i.e. the writ applicant herein was unable to prove the genuineness of the purchase. It may be a cryptic order but the Authority has conveyed what it want to convey in the facts and circumstances of the case.

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that we should not entertain this writ application against the final order passed by the Authority concerned in MOV-11 confiscating the goods and the conveyance. The entire evidence will have to be looked into which has come on record. In such circumstances, we relegate the writ applicant herein as well as the applicant of the Civil Application to prefer an appropriate appeal under Section 107 of the Act before the Appellate Authority. If any such Appeals are filed, the Appellate Authority shall look into those and decide them in accordance with the law expeditiously. We

clarify that even pending the Appeals, it shall be open for the writ applicant herein being the owner of the goods and the applicant of the Civil Application being the owner of the conveyance to prefer an appropriate application for the provisional release of the goods as well as the conveyance. It may happen that the Appellate Authority may take some time before it decides the appeals on merits and during that period, if the Appellate Authority deems fit, he may provisionally release the goods and the vehicle subject to certain terms and conditions. We take notice of the fact that there may not be a provision analogous to Sub-section 6 of Section 67 in Section 107 of the Act. However, being an Appellate Authority, there is always an inherent power to pass such interim orders.

8. With the aforesaid this writ application stands disposed. The Civil Application also stands disposed of. We clarify that we have otherwise not expressed any opinion on the merits of the case. The Appeals that may be filed shall be decided strictly on their own merits in accordance with law.

9. The Appellate Authority shall not decline to entertain the appeals on the ground of limitation. We say so because the writ applicant as well as the applicant of the Civil Application though fit to pursue the matter before the High Court. In such circumstances, the issue of delay should not come in their way so far as the Appeals are concerned.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

Y.N. VYAS