

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 4912 of 2022**

**With**

**R/SPECIAL CIVIL APPLICATION NO. 4916 of 2022**

**With**

**R/SPECIAL CIVIL APPLICATION NO. 4924 of 2022**

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METALLEK TRADING PRIVATE LIMITED

Versus

STATE OF GUJARAT

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Appearance:

HIREN J TRIVEDI(8808) for the Petitioner(s) No. 1

for the Respondent(s) No. 2

ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP 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 : 17/03/2022**

**COMMON ORAL ORDER**

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

1. Since the issues raised in all the captioned writ-applications are the same, those were taken up for hearing analogously and are being disposed of by this common order.

2. The Special Civil Application No.4912 of 2022 is treated as the lead matter.

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

*19(A) be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, orders or directions to quash and set aside the impugned notice in FORM GST MOV-10 (at Annexure-F) as well as impugned order of detention in FORM GST MOV-6 (at Annexure-E) received vide mail dated 18.02.2022.*

*(B) be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, orders or directions to respondent authorities to forthwith release truck No.GJ-02-Z-6864 along with the goods contained therein by quashing and setting aside the detention notices and orders;*

*(C) be pleased to grant ex-parte, ad interim order in favour of the petitioner herein in terms of prayer clause 'A' and 'B' hereinabove;*

*(D) pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case.*

4. It appears from the materials on record that the writ-applicant is a Company incorporated under the provisions of the Companies Act, 1956 [for short '*The Act, 1956*']. The Company is engaged in the business of wholesale trading of scrap. The company has got itself registered under the provisions of the GST Act. The writ-applicant got an order for supply of copper scraps in varied forms from one Niyon Ispat LLP, Nurpura, Gujarat. Niyon Ispat LLP is also registered under the GST.

5. It is the case of the writ-applicant that it generated tax invoice No.MT/21-22/121, dated 14.02.2022 for the value of the goods and the same was handed over to the transporter. The goods were brought from Surat to be dispatched at the Nurpura Industrial Estate, behind Prerna Jin, Himmatnagar-Idar Highway Road, Nurpura, Gujarat. The E-way bill was also generated. The goods were transported in a conveyance owned by Hariom Roadways.

6. While the goods were in transit, the same came to be detained on 15.02.2022 near Nurpura Gam. The statement of the driver of the vehicle in MOV-01 was recorded. The order for inspection of the goods and the vehicle was passed in MOV-02. The physical verification of the goods was also carried out. Ultimately, a notice in the Form GST MOV-10 came to be issued calling upon the writ-applicant to show-cause as to why the goods and the conveyance should not be confiscated under Section-130 of the Act.

7. In such circumstances referred to above, the writ-applicant is here before this Court with the present writ-application.

8. We have heard Mr. Hiren Trivedi, the learned counsel appearing for the writ-applicant and Mr. Utkarsh Sharma, the learned AGP appearing for the respondents.

9. The matter as on date is at the stage of MOV-10. We do not want to come in the way of the authorities so far as the confiscation proceedings are concerned. It is open for the concerned Department to proceed further with the confiscation proceedings. However, we are inclined to order release of the goods and the conveyance since the writ-applicant has deposited an amount of *Rs.3,25,454/- [Rupees Three Lakh Twenty Five Thousand Four Hundred Fifty Four only]* only by a Challan dated 10.03.2022 towards penalty. This is 200% of the tax amount. The value of the goods appears to be approximately *Rs.9,00,000/- [Rupees Nine Lakh Only]*.

10. Let the goods and the conveyance be released subject to the writ-applicant filing an appropriate undertaking in writing on oath to the satisfaction of the authority concerned and also, by executing a bond of the amount that may be levied towards fine in-lieu of confiscation.

11. With the aforesaid, this writ-application stands disposed of.

12. So far as the connected two writ-applications are concerned, in those cases also, the amount towards penalty has been paid. In other two cases also, the goods and the conveyance shall be released on the writ-applicant filing an undertaking in writing on oath to the satisfaction of the authority and also, upon the execution of a bond of the amount that may be levied in-lieu of confiscation.

Direct service is permitted.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

A. B. VAGHELA