

GUJARAT HIGH COURT

No.- R/SPECIAL CIVIL APPLICATION NO. 12712 of 2020

Anant Jignesh Shah -Appellant
Versus
The Union of India -Respondent

Honourable The Chief Justice Mr. Vikram Nath And Honourable Mr. Justice J.B. Pardiwala

Date of order: 06/11/2020

Appearance:

Mr Tushar Hemani, Senior Counsel with Ms Vaibhavi K Parikh : For the Petitioner(s)

Mr Chintan Dave, Assistant Government Pleader : For the Respondent(s)
In Favour of Assessee

Issues Involved :-For selling goods to trader Nakoda & Company, Ahmedabad, having office at Shahibag, Ahmedabad, Gujarat, having GSTIN No. 24BQDPS09883, trader Atharva Enterprise 17, Shriram Colony, Yantra Mahal Marg Ujjain, having GSTIN No. 23BKFPS2904B2ZM had generated E-way Bill No. 631216432684 on 08.09.2020. Thereafter, on 09.09.2020, they had gone to Ujjain by taking goods together with E-way bill Nos. 681216854838, 681216855819, 631216832772 etc. and had returned on 12.09.2020 by loading the goods from Ujjain. At that time, the tax bill dated 8.9.2020 was produced when the vehicle was intercepted. On asking as regards second round for the said goods, it was stated that on 8.9.2020, they had loaded vegetables, which goods were unloaded by them at Ahmedabad and the purchaser has given statement on the letter pad that they have ordered the goods of the bill dated 8.9.2020 at present, which is caught by you. It has been stated that they have earlier not taken goods on the said bill. On checking the said vehicle, it has gone at the Toll Tax on 9.9.2020 and again on 12.9.2020, it has arrived from Madhya Pradesh and evidence in that regard are produced and submissions are made by the purchaser trader and as the pan masala being sensitive commodity, the submission of the trader is not accepted. And second round is counted. Thus, in the said case, as the trader has generated E-way bill but has transported the goods twice on the very same bill, proceeding is initiated under [Section 130](#) of the Gujarat Goods and Services Tax Act and the Rules.” The show cause notice under Section 130 of the Act cannot be issued on a mere suspicion. There has to be some prima facie material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be confiscated

Held At-The show cause notice under [Section 130](#) of the Act cannot be issued on a mere suspicion. There has to be some prima facie material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be confiscated under [Section 130](#) of the Act.

JUDGMENT

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

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

“(a) to quash and set aside the Order and Detention under [Section 129\(1\)](#) of the CGST Act dated 13/09/2020 (Annexure-“A”) issued by the Respondent No.2;

(b) to quash and set aside the Show Cause Notice under [Section 130](#) of the CGST Act dated 15/09/2020 (Annexure –“A1”) issued by the Respondent No.2;

(c) pending the admission, hearing and final disposal of this petition, to stay the implementation and operation of the Order of Detention under [Section 129\(1\)](#) of the CGST Act at Annexure-“A” to this petition;

contravention of the provisions of the Act or the Rules. However, according to Mr. Dave, the authorities have grave suspicion that the driver of the vehicle might have entered Ahmedabad on the same E-way bill and might have succeeded in getting out thereafter without payment of any tax. Thus, the case of Mr. Dave, the learned Assistant Government Pleader is one of evasion of tax for some transaction which is unknown.

9. The show cause notice under [Section 130](#) of the Act cannot be issued on a mere suspicion. There has to be some prima facie material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be confiscated under [Section 130](#) of the Act.

10. In such circumstances referred to above, we are left with no other option but to quash and set aside the notice in Form GST [MOV-10](#) dated 15th September, 2020. It is hereby ordered to be quashed. We clarify that if there is any other inquiry to be made as regards any other transaction, it is open for the authority to initiate and carry out such inquiry. With the above, this writ application stands allowed.