

C/SCA/10804/2022

ORDER DATED: 24/08/2022

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10804 of 2022

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M/S MITANSH IMPEX
Versus
STATE OF GUJARAT

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Appearance:
MS VIDITA D JAYSWAL(6730) for the Petitioner(s) No. 1
MR. KRUTIK PARIKH, ASSISTANT GOVERNMENT PLEADER for the
Respondent(s) No. 1
NOTICE UNSERVED for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 24/08/2022

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Heard learned advocate Ms. Vidita Jayswal for the petitioner.

1.1 In the facts and circumstances of the case and having regard to the request and consent of the parties through their learned advocates, the petition was taken up for final consideration.

1.2 Rule, returnable forthwith. Learned Assistant Government Pleader Mr. Krutik Parikh waives service of Rule on behalf of the respondent State and its authorities.

2. Heard learned advocate Ms. Vidita Jayswal for the petitioner and learned Assistant Government Pleader for the respondent State and its

authorities.

3. What is prayed in this petition filed under Article 226 of the Constitution is to set aside communication dated 7.5.2022 alongwith Satisfactory Note/order dated 6.5.2022 whereby the Current Account No. 920020067484110 of the petitioner with the Axis Bank, Shahibaug Branch, Ahmedabad came to be attached.

3.1 The petitioner firm is engaged in the trading of ferrous and non-ferrous metal since last two years. It holds valid registration certificate under the Central Goods and Services Tax Act, 2017 as well as under the Gujarat Goods and Services Tax Act, 2017. It appears that respondent No.1-Commissioner of State Tax (4), Enforcement, Division-1, Ahmedabad, sent summon dated 29.1.2022 under under section 70(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act'). The petitioner appeared before the authority on 7.2.2022 and requested for providing documents in respect of the queries which were raised by the authority.

3.2 It is stated by the petitioner that he sent reply dated 5.3.2022 answering the queries alongwith all the documentary evidence as to the the transactions and payments made to Sabarmati Resources Ltd.. The petitioner requested the authorities to intimate the petitioner if further investigation was required.

3.3 From the Satisfactory Note, it could be gathered that the allegations against the petitioner are that the department had reason to believe that M/s. Sabarmati Resources Limited was engaged in bogus billing activities and that the said M/s. Sabarmati Resources Limited had undertaken such activity of issuance of invoices without the real

movement of goods and thus the firm was a bogus firm.

3.4 It was stated that the owner of this firm was also arrested and currently under judicial custody. The petitioner M/s. Mitansh Impex had shown purchases made from the said M/s. Sabarmati Resources Limited and had availed and utilised the fake input tax credit. It was stated that the petitioner M/s. Mitansh Impex failed to submit documentary evidences relating to the purchase of goods from M/s. Sabarmati Resources Limited.

3.5 It is recorded in the Satisfactory Note that one shri Murli Laluramji Kothari proprietor of petitioner M/s. Mitansh Impex appeared before the authority on 15.2.2022 and by filling written statement stated that he was not ready to pay liability raised from the purchases allegedly made from bogus firm. The allegation was that the petitioner M/s Mitansh Impex wrongfully availed the input tax credit amounted to Rs. 6,10,511/-, interest of Rs. 91,526/- paid upto 5.5.2022 and penalty of Rs. 91,577/- totalling to Rs. 7,93,613/- was payable. As a result, the current bank account of the petitioner came to be attached.

4. It was submitted by learned advocate for the petitioner that powers under section 83 of the Act regarding provisional attachment are very drastic and required to be exercised with due care and circumspection. It was submitted that no demand has been raised pursuant to framing of assessment by the authorities and the petitioner did not have opportunity to put forth his case. It was submitted that all the business transactions of the petitioner are linked to the bank account which is attached and therefore, the petitioner finds it difficult to run the business and make a living.

4.1 The petition was contested by the respondents by filling affidavit-in-reply to submit that the petitioner was given ample time to submit the evidence to prove the genuineness of purchase transactions with M/s. Sabarmati Resources Limited, however, the petitioner could not prove the genuineness of the transactions. Therefore, the authorities were constrained to protect the interest of the government in respect of the wrongful availed input tax credit amounting to Rs. 6,10,511/-.

4.2 The rejoinder affidavit was filed by the petitioner reiterating the case in the petition to further submit that the petitioner had made payment of GST for the transactions in respect of purchases. It was stated that the petitioner was unaware of intention of the said M/s. Sabarmati Resources Limited. It was stated that, had the petitioner been aware that the registration of business of the said party had been cancelled, the petitioner would not have entered into any transaction with the said party. Learned advocate for the petitioner urged that harsh step of freezing the current account may be removed. It was submitted that the petitioner was ready to give the bank guarantee of the tax amount.

4.3 In response to the submission of the petitioner regarding furnishing a bank guarantee in respect of the demand of tax, learned Assistant Government Pleader submitted that bank guarantee should be furnished in respect of the total amount including the interest and penalty as well.

5. As is seen above, the arrears of tax is of Rs. 6,10,511/- plus the interest amount of Rs. 91,526/- and penalty of an amount of Rs. 91,577/-.

5.1 The court does not find any reasonableness in the submission of learned Assistant Government Pleader that the bank guarantee amount should cover the interest and penalty also, more particularly when the

adjudicatory process against the petitioner is yet to complete.

5.2 It would be just and proper to require the petitioner to submit the bank guarantee in respect of the tax amount of Rs. 6,10,511/-. This would adequately secure the tax amount for the department and further take care the interests of the revenue at this stage.

6. In the above view, this petition is allowed by setting aside the communication dated 7.5.2022 and the satisfactory note/order dated 6.5.2022 whereby the current the Current Account No. 920020067484110 of the petitioner with the Axis Bank, Shahibaug Branch, Ahmedabad has been attached. The attachment shall be lifted on the condition that the petitioner furnishes to the competent authority of the respondent authority the bank guarantee for the amount equivalent to Rs. 6,10,511/-

6.1 It goes without saying that this court has not expressed any opinion on the merits of the controversy which is to be subjected to the adjudicatory process which may be undertaken against the petitioner.

7. The petition is allowed in the aforesaid terms. Rule is made absolute.

Direct service is permitted.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

C.M. JOSHI/pps