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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6465 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 6492 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 6491 of 2021

=====

AMITKUMAR RAMESHBHAI PATEL ,

SANJAY PRAHLADBHAI PATEL

and

SANJAYKUMAR @ SHANKAR MAFATLAL PATEL

Versus

STATE OF GUJARAT & ORS.

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Appearance :

MR TEJAS M BAROT, ADVOCATE for the Petitioners

MR HARDIK SONI, ASSISTANT GOVERNMENT PLEADER
for the Respondent - State Authorities

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CORAM: **HONOURABLE MR. JUSTICE PARESH UPADHYAY**

Date : 18/08/2021

CAV ORDER

1. The petitioners apprehended detention under PASA in connection with the Complaint filed by the State Tax Department in the Court of the Chief Judicial Magistrate, Ahmedabad under different sub-sections of Section 132 of the Gujarat Goods and Services Tax Act, 2017 and Central Goods and Services Tax Act, 2017 read with Section 120B of the Indian Penal Code.

2. In response to the notice of this Court, on 15.06.2021 it was informed to the Court that, atleast one of the petitioners

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could be detained under PASA. While granting protection in favour of the petitioners, this Court had passed the following order.

“1. The petitioners apprehended their detention under PASA.

2. In response to the notice of this Court, Mr. Hardik Soni, learned AGP on instruction states that, the investigation is already completed and charge-sheet is also filed. He further states that it is a multi-states scam and final decision is pending. It is further submitted that so far petitioner of Special Civil Application No.6491 of 2021 - Sanjaykumar Mafatlal Patel is concerned, there are two offences against him.

3. The issue involved in the matter is, whether in the cases of discrepancies in GST, sword of detention under PASA should be kept hanging over the head of the trader community. Further, if at all in a given case such proposal is contemplated, at what stage that decision should be taken is also an issue, for which the response from the State is required.

4. Leave to join the State of Gujarat, through Additional Chief Secretary (Finance), New Sachivalaya Complex, Gandhinagar as party respondent.

5. Mr. Hardik Soni, learned AGP appears and waives for newly added respondent.

6. List on 30.06.2021.

7. In the meantime, it is ordered that if the detaining Authority, which in the present case is indicated to be the Collector and District Magistrate, Mehsana, receives any

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proposal to detain any of the petitioners under PASA, his prima facie satisfaction in that regard shall first be placed on record of these petitions.

Direct service is permitted.”

3. There is no response from the Finance Department of the State of Gujarat to the above quoted query of this Court. Instead, affidavit in replies - all dated 22.07.2021 are filed on behalf of the Gujarat Goods and Services Tax Department, wherein, over and above giving details of the allegations against the petitioners, in the concluding part it is stated that, no proposal is made to detain the petitioners under PASA **so far**, by the State GST Department.

4. The above shows that, not only the query raised by the Court qua the citizen - the trader community in this case, is not responded by the competent Authority from the Finance Department of the State, the sword is kept hanging over the head of the traders, because it is replied by the GST Department that no proposal is made to detain the petitioners under PASA **so far**. Citizen can not be left in lurch like this. Further, when the State on the whole and the economy in particular is trying to regain the momentum post COVID, such hanging sword situation can not be permitted to continue.

5. Having heard learned advocates for the respective parties and having considered the material on record and also the above noted factors, this Court finds that, in the facts like this, the State Authorities can not be permitted to resort to the stringent provisions like detention under the Prevention of Anti

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Social Activities Act against the petitioners. The State is restrained from resorting to the said option against the petitioners in these cases.

6. These petitions are allowed in above terms.

(PARESH UPADHYAY, J)

M.H. DAVE/pc-4

