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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 19549 of 2021

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M/S. KARNATAKA TRADERS
Versus
STATE OF GUJARAT

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Appearance:

MR SAMIR GUPTA ADVOCATE WITH MR MONAL S CHAGLANI(10240) for
the Petitioner(s) No. 1,2

DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 1

MR UTKARSH SHARMA, AGP(1) for the Respondent(s) No. 1,2,3

NOTICE NOT RECD BACK(3) for the Respondent(s) No. 1,2,3

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 06/01/2022

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE NISHA M. THAKORE)

1 Rule returnable forthwith. Learned A.G.P. Mr. Utkarsh Sharma waives service of notice of rule for and on behalf of the respondents.

2 The challenge in the present writ application is to the confiscation notice dated 4th December 2021 issued by the Tax Commissioner (Enforcement) Division – 1, Ahmedabad, in exercise of powers conferred under Section 130 of the Central Goods and Services Tax Act, 2017 (for short, “the CGST Act”) read with the relevant provisions of the Integrated Goods and Services Tax Act, 2017 (for short, “the IGST Act”). The petitioner has also prayed for direction of issuance of a writ of mandamus to forthwith release the goods and vehicle without demanding any security.

3 The relevant facts which emerges from the record are reproduced as under:

4 The petitioner No.1 is a seller of the goods (Areca nut) and a registered dealer under the GST. It is the case of the petitioner No.1 that the goods were to be sold by the petitioner No.1 to the buyer who was having the office premises in Ahmedabad. It is undisputed that the petitioner No.1 is a duly registered dealer under the GST Act. So far as the petitioner No.2 is concerned, he claims to be the owner of the Truck bearing registration No.KA 18 C 2681 on which the instant goods were to be transported.

5 The consignment was intercepted by the respondent No.3 on 20th November 2021 at around 11:40 AM at Changodar Road, Navapura. The statement of the driver / person in charge of the vehicle was recorded on 20th November 2021. The necessary documents i.e. E-way bill and Tax Invoice were produced before the respondent No.3 under Section 68(1) of the CGST Act. However, the respondent No.3 had issued Form GST MOV – 02 to conduct physical verification / inspection of the conveyance, goods and documents and upon examination of the same, the respondent No.3 had prepared report in Form GST MOV – 04. No discrepancy was noted by the respondent No.3 with regard to the description of goods as per invoice and conveyance nor any anomaly was found with regard to quantity as per invoice and physical verification undertaken by the respondent No.3.

6 The respondent No.3 noticed two discrepancies in the impugned notice Form GST MOV – 10, which reads as under:

“(i) Vehicle was intercepted while it was travelling to the different

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direction than the direction of destination or way to the destination. So it is clear that the goods was not moving to the place destined for. Hence it appears that the goods is being transported with intention to evade tax.

(ii) The value of goods being transported is shown Rs.286/- which is to low compared to its Real Market Value i.e. 330/-.”

7 Being aggrieved by the aforesaid action of the respondent No.3, the petitioners are here before this Court with the present writ application.

8 Considering the submissions made by the learned advocate appearing for the petitioners, this Court has issued notice vide order dated 22nd December 2021. The same reads thus:

“1. Petitioner is before this Court seeking to challenge the action of the respondent authority by way of the following reliefs:

“43. In view f the above, the Petitioner most humbly prays that:

It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to issue a Writ, Order or Direction in the nature of:

(a) Certiorari quashing the MOV-10 (Confiscation notice dated 04.12.21 (Annexure-A to the Writ Petition);

(b) Mandamus directing the Respondent no.3 to forthwith release the goods and vehicle without demanding any security;

(c) Pending notice, admission and final hearing of this petition, this Hon’ble Court may be pleased to direct the learned Respondent Authorities to forthwith release goods with vehicle no.KA18 C 2681 detained/seized in purported exercise of powers under Section 129 and Section 130 of the GST Acts;

(d) Issue any other writ, Order or Direction in favour of the petitioner which this Hon’ble Court deems fit in the facts and circumstances of the

case;

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(e) Award cost of the petition to the petitioner;”

2. According to the petitioner, there are two grounds on which the action has been taken by the respondent authority. Firstly, when the goods cannot be transported to Ahmedabad from Karnataka because of wrong route and secondly, because of under valuation of the goods. Learned advocate for the petitioner has relied on the decision in the case of **Podaran Foods India Pvt. Ltd. vs. State of Kerala, 2020 (50) GSTL(Ker.)**, where the Court is categorical that mechanical detention of the consignment is impermissible, merely because the driver has opted for different route. He has also relied on the decision in the case of **K.P. Sugandh Ltd. vs. State of Chhattisgarh, 2020(38) G.S.T.L. 317(Chattisgarh)** on the ground that the Court has not held the detention of vehicle and the seizure of goods sustainable merely because there was an undervaluation, by holding that it is for the department to initiate the appropriate separate proceedings with regard to the alleged undervaluation and that itself cannot furnish a ground for detention of vehicle. It is urged that all aspects have been placed by way of objection, which has not been considered.

3. The petitioner has shown inclination to pay tax and penalty. Let the request be made to the concerned officer, who will consider without being deterred by the pendency of this petition. Any order passed will not have a tendency of creating any equity in favour of either parties.

4. Notice returnable on 05.01.2022.

5. Over and above the regular mode, direct service by way of Speed Post or E-mode is also permitted.”

9 In response to the notice issued by this Court, learned A.G.P. Mr. Utkarsh Sharma has appeared on behalf of the State – authorities.

10 Learned advocate Mr. Samir Gupta assisted by learned advocate Mr. Monal S. Chaglani has appeared for the petitioners and has submitted that two grounds on which the department proposes to confiscate the goods and vehicle referred to above are not tenable at all in law. The attention of this Court is drawn to the decision rendered by the High Court of Judicature of Chhattisgarh in the case of **K. P. Sugandh Ltd vs. State of Chhattisgarh reported in 2020(38) GSTL 317**

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(Chhattisgarh) and it is submitted that undervaluation of seized goods in transit cannot be a ground to confiscate the goods and vehicle. The learned advocate has further submitted that similarly, the second ground raised by the respondent No.3 – authority is also not sustainable in the eye of law. The learned advocate has referred to and relied upon the observations made in para 10 of the said judgement. The same reproduced as under:

“Merely because the manufacturer sells his products to its customer or dealer at a price lower than the MRP, as such cannot be a ground on which the product or the vehicle could be seized or detained. If at all if this, according to the respondents, is contrary to the law, the authorities are supposed to draw an appropriate proceeding under the law. If at all what the State counsel has submitted is to be accepted, even then it would be only a case of an alleged sale of a product at a lower costs than the MRP. The Inspecting Authorities for the alleged discrepancy could have only intimated the Assessing Authority for initiating appropriate proceedings. What is more relevant to take note of is the fact that the details in the invoice bill as well as in the e-way bill matched the products found in the vehicle at the time of inspection except for the price of sale.”

11 The learned advocate has further relied upon the decisions of the Kerala High Court in the case of **Podaran foods India Pvt Ltd vs. State of Kerala reported in 2021 (50) GSTL 412 (Ker)** as well as in the case of **Kannangayathu Metals vs. Assistant State Tax Officer, SGST Deptt, Thiruvananthapuram reported in 2019 (31) GSTL 391 (Ker)**.

12 On the other hand, learned A.G.P. Mr. Sharma has vehemently objected to the grant of relief in favour of the petitioners by submitting that the route preferred by the the petitioner No.1 reflects that he had intention to evade tax. Such intention can be presumed from the fact that the route which was preferred by the petitioner was travelling to the different direction than the direction of destination or way to the destination. Hence, it was submitted not to entertain this writ

application.

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13 On careful consideration of the facts and circumstances of the case and the submissions made by the respective advocates for the parties, we find the force in the contention of the learned advocate appearing for the petitioners that there cannot be any mechanical detention of a consignment in transit solely on the basis of the two reasons as stated by the respondent No.3 in the impugned notice. We find that merely the direction preferred by the petitioners for delivery of consignment to the place destined for, an inference cannot be drawn with regard to the intention of the petitioners to evade tax. So far as the second ground with regard to the goods being transported to be undervalued is concerned, no material has been placed on record. Even otherwise, as held by this Court as well as other High Courts, it is a settled legal position that undervaluation cannot be a ground for seizure of goods in transit by the inspecting authority. In the instant case, there is no such indication.

14 In the result, the present writ application succeeds and is hereby allowed. The confiscation proceedings initiated by the respondents are hereby quashed and set aside. The vehicle as well as the goods shall be released at the earliest and handed over to the writ applicants.

15 We clarify that we have quashed the entire confiscation proceedings keeping in mind two things: first, mere change of route without anything more would not necessarily be sufficient to draw an inference that the intention was to evade tax. Sometime, change of route may assume importance provided there is cogent material with the department to indicate that an attempt was sought to be made to dispose of the goods indirectly at a particular place. If such is the case,

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then probably, the authority may be justified in initiating appropriate proceedings, but mere change of route of the vehicle by itself is not sufficient. In the same manner, mere undervaluation of the goods also by itself is not sufficient to detain the goods and vehicle far from being liable to confiscation.

16 Rule is made absolute to the aforesaid extent. Direct service is permitted.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

CHANDRESH