

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7189 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

M/S NEUVERA WELLNESS VENTURES PVT LTD

Versus

STATE OF GUJARAT

Appearance:

KUNTAL A PARIKH(7757) for the Petitioner(s) No. 1,2

MR UTKARSH SHARMA, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1,2

CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 18/04/2019

ORAL JUDGMENT

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Rule. Mr. Utkarsh Sharma, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondents.

2. Having regard to the controversy involved in the present case, which lies in a narrow compass and with the consent of the learned advocates for the respective parties, the matter was taken up for final hearing.

3. By this petition under Article 226 of the Constitution of India, the petitioners have challenged the demand order dated 2.4.2019 passed by the second respondent State Tax Officer, (2), Mobile Squad-2, Enforcement-7, Surat, and seeks a direction to the respondents to forthwith release the goods with Truck No.MH-43-U-8620 detained and seized in exercise of powers under sections 129 and 130 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act) and other related statutes.

4. Shortly stated the case of the petitioners is that the first petitioner is engaged in import and sale of dietary food products such as protein powder of different flavours. Insofar as import transactions are concerned, the petitioner is required to pay customs duty as well as integrated goods and services tax (hereinafter referred to as "IGST") payable on such imports before clearance for home consumption. The first petitioner had imported consignments of Whey Protein Powder from Budapest Hungary and United States at Mundra Port under four different invoices and warehousing bills of entry were filed for such imports. Thus, the imported goods were kept in

customs bonded warehouse of the first petitioner and thereafter such goods were cleared by the first petitioner for home consumption by filing ex-bond bills of entry on 9.3.2019, 11.3.2019 and 22.3.2019. It is the case of the petitioners that at the time of clearance of goods, the first petitioner had paid the applicable customs duty as well as IGST payable on imports. The goods of the petitioners were being transported to their warehouse in Bhiwandi, Maharashtra. It appears that Part-A of four separate E-way bills was uploaded by the petitioners, but Part-B of these four E-way bills was not generated by the transporter due to some technical problem. However, since the goods were of perishable nature, the transporter did not wait for Part-B of the E-way bills. On 27.3.2019 at 10:00 PM, the truck bearing No.MH-43-U-8620 transporting the goods of the first petitioner was stopped for verification at Kamrej Toll by the second respondent. It is the case of the petitioners that the transporter had duly produced all documents relating to the goods, including the four bills of entry for home consumption evidencing payment of IGST on the transaction. The truck and the goods were detained by the second respondent on the ground that Part-B of the E-way bills was not generated. Thereafter an order dated 27.3.2019 issued for physical verification in FORM GST MOV-02 and an order dated 27.3.2019 for detention of goods and vehicle in FORM GST MOV-06 were served upon the transporter of the goods. It is the case of the petitioners that upon being informed about the detention, the petitioners immediately generated Part-B of the E-way bills in respect of the transactions and approached the second respondent and gave explanation. It was submitted that the goods being perishable in nature and due to urgency of transporting the goods, the

transporter had commenced transportation of goods immediately on clearance by the customs authorities without waiting for Part-B of the E-way bills. It was also submitted that the imported goods were taken by the first petitioner to its own godown directly from the bonded warehouse and, therefore, it was not a transaction for supply in respect of which goods and services tax (GST) would be leviable and that IGST had already been paid on the transaction even before the commencement of movement of the goods.

5. The second respondent, however, refused to release the goods on the ground of absence of Part-B of E-way bills and issued notices in FORM GST MOV-07 dated 31.3.2019 under section 129(3) of the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the "GGST Act") and the CGST Act and insisted upon payment of GST of Rs.5,93,505/- and 100% penalty of Rs.5,93,505/- under section 129 of the GST Acts. The petitioner filed its reply to the notice vide letter dated 1.4.2019 and requested to release the goods. By the impugned order of demand dated 2.4.2019 issued in FORM GST MOV-09, the second respondent directed the first petitioner to make payment of tax and 100% penalty within seven days from the date of the order and recorded that in case of failure of payment of tax and penalty, action under section 130 of the GST Acts would be initiated. Being aggrieved, the petitioners have filed the present petition.

6. Mr. Kuntal Parikh, learned advocate for the petitioners, invited the attention of the court to the provisions of section 129(1) of the CGST Act to submit that clause (a) thereof provides for release of goods that have been detained or

seized on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty. It was submitted that in the facts of the present case since there was no supply of goods, the question of payment of GST would not arise, and hence, there was no question of payment of applicable tax. It was submitted that, therefore, at best the second respondent ought to have considered the goods as exempted goods and called upon the petitioner to pay the amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less. It was contended that in the absence of any liability of the petitioner to pay GST, the question of payment of applicable tax and penalty equal to hundred percent of such tax did not arise.

6.1 The attention of the court was further invited to clause (c) of sub-section (1) of section 129 of the CSGT Act, which provides for release of goods and conveyance detained and seized upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed. It was submitted that, therefore, considering the fact that the goods in question are perishable goods, the second respondent was not justified in not releasing the goods and calling upon the petitioner to furnish security equivalent to the amount payable under clause (a) or clause (b). Reference was also made to sub-section (2) of section 129 of the CGST Act which provides that the provisions of sub-section (6) of section 67 shall *mutatis mutandis* apply

for detention and seizure of goods and conveyances. Reference was made to sub-section (6) of section 67 of the Act which provides that the goods so seized under sub-section (2) shall be released on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

6.2 The attention of the court was further invited to the written submissions made by the petitioner on 29.3.2019 made to the second respondent.

6.3 Referring to the impugned order, it was pointed that the same is totally a non-reasoned order and that the second respondent has not considered the submissions advanced by the petitioners that the petitioners had already paid IGST on the goods in question and hence, the question of again paying IGST amount of Rs.5,93,503/- would not arise as it would tantamount to applicability of total input credit tax on the same transaction. It was submitted that the impugned order being contrary to the provisions of section 129 of the GGST and CGST Acts and being a non-speaking order deserves to be quashed and set aside and the respondents should be directed to release the goods in question, subject to such conditions as this court may deem fit.

7. On the other hand, Mr. Utkarsh Sharma, learned Assistant Government Pleader for the respondents, supported the impugned order by submitting that admittedly the goods were not accompanied by Part-B of the E-way bills and hence, the second respondent was wholly justified in detaining the

conveyance and goods. It was further submitted that as there was a contravention of the provisions of the GST Act and the rules made thereunder, inasmuch as the goods were being transported without Part B of the E-way bills, the second respondent was wholly justified in imposing tax and penalty thereon. It was urged that the petition being devoid of merit, deserves to be dismissed.

8. This court has considered the submissions advanced by the learned advocates for the respective parties and has perused the record of the case as available before this court.

9. For the reasons that follow, this court does not intend to enter into the merits of the submissions advanced by the learned advocate for the petitioners as regards the liability or otherwise to pay tax and penalty and the quantum of tax payable by the petitioners. A perusal of the impugned order dated 2.4.2019 passed by the second respondent in FORM GST MOV-09 whereby tax and penalty have been demanded, reveals that the basis for computing the additional tax is the IGST paid by the petitioners. Moreover, in the impugned order there is not even a whisper as regards the submissions advanced on behalf of the petitioners, nor have the same been dealt with in the body of the order. No reasons have been assigned by the second respondent for the purpose of holding the petitioner liable to payment of tax and penalty despite the fact that IGST had already been paid on such transaction and the goods were being moved from the customs warehouse to the petitioner's own godown and it being the case of the petitioners that there was no supply, and hence, the provisions of GST Act are not applicable. The impugned order is,

therefore, totally bereft of any reasoning. Reasons, it is well known, are the heart and soul of an order passed by a judicial/quasi-judicial order, without which it is difficult to pronounce one way or other as regards the validity of such order. In the absence of any reasons to support the findings given by a judicial/quasi judicial authority, it is not possible to ascertain as to how the authority came to a particular conclusion. Under the circumstances, in the absence of any reasons in support of the tax and penalty levied by the second respondent, the impugned order stands vitiated as being an unreasoned order and as such cannot be sustained. However, the matter is required to be restored to the file of the second respondent for deciding the same afresh in accordance with law by passing a speaking order after duly considering the submissions advanced by the petitioners.

10. However, the goods of the petitioner being perishable goods, it would not be just, proper and reasonable to keep such goods under detention any longer. Under the circumstances, the petitioners would be entitled to the release of the conveyance as well as the goods in question subject to compliance of clause (c) of section 129(1) of the CGST/GGST Acts.

11. For the foregoing reasons, the petition partly succeeds and is, accordingly allowed to the following extent:

The impugned order dated 2.4.2019 passed by the second respondent (Annexure-H to the petition) is hereby quashed and set aside. The matter is restored to the file of the second respondent who shall decide the same afresh in

accordance with law after giving an opportunity of hearing to the petitioner. It need not be stated that the second respondent shall pass a speaking order, dealing with all the contentions raised by the petitioners. In the meanwhile, as the goods in question are perishable goods, for the purpose of grant of immediate relief to the petitioners, the goods in question together with truck No.MH-43-U-8620 are ordered to be released, subject to the petitioners furnishing security by way of bond of an amount of rupees twelve lakhs (Rs.12,00,000/-) to the respondent authorities. It is clarified, that this court has directed the petitioners to furnish security of Rs.12,00,000/- only for the purpose of granting immediate relief to the petitioners as the goods in question are perishable goods, and the same shall not be construed as if this court has expressed any opinion that the petitioner is liable to pay such amount of tax and penalty. The liability of the petitioner shall be considered independently on the basis of the submissions advanced by the learned advocate for the petitioner, namely, that IGST has already been paid on the goods in question and that there is no transaction of supply in the present case and any other submission that may be made before the second respondent. Rule is made absolute accordingly to the aforesaid extent. Direct service is permitted.

(HARSHA DEVANI, J)

(BHARGAV D. KARIA, J)

Z.G. SHAIKH