

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7378 of 2020

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COLGATE PALMOLIVE INDIA LTD.

Versus

STATE OF GUJARAT

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Appearance:

MR HARDIK P MODH(5344) for the Petitioner(s) No. 1

for the Respondent(s) No. 2,3

MR UTKARSH SHARMA, ASST. GOVERNMENT PLEADER/PP(99) for the
Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MR. JUSTICE N.V.ANJARIA

Date : 11/06/2020

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. This is a petition filed by the company having its Principal Place of Business at Vadodara which is the warehouse used for storage for finished goods and having its

manufacturing unit at Sanand, Ahmedabad. It has a single GST registration number both for the factory and warehouse under the provisions of Central Goods and Service Tax Act, 2017 and Gujarat State Goods and Service Tax Act, 2017 (hereinafter referred to as 'the GST Act').

2. What has aggrieved the present petitioner is the show-cause notice issued on 01.06.2020 under Section 129 (3) of the CGST Act/SGST Act and the detention order issued dated 01.06.2020 under Section 129(1) of the CGST Act/SGST Act, 2017, by the respondent no.3.

3. It is the say of the petitioner that it applied for single registration number under the CGST Act having the principal place of business as his warehouse at Vadodara and additional place of business as his factory which is located at Ahmedabad in the registered certificate.

4. The petitioner has averred before this Court in the present petition that the petitioner placed an order to its unit located at Goa for supply of dental cream flavor which is one

of the basic raw material for manufacturing of oral or dental paste and the same had been issued by the Goa Unit. It is further averred that the Goa Unit had issued the E-way bill incorporating all the details as required in terms of provisions of E-way Rules, however, the address of the place of the delivery in the E-way bill was inadvertently mentioned as Vadodara Warehouse unit instead of factory address of Ahmedabad of the petitioner. Therefore, the truck bearing No. GJ-01-CU-7154 carrying goods mentioned in the invoice issued by the Goa Unit was intercepted on 01.06.2020 for verification on the Ahmedabad Express Highway and because of this mismatch of the place of delivery in the invoice and E-way bill, the goods have been detained and the show-cause notice has been issued.

5. The petitioner is before this Court seeking to question and challenge the exercise of the powers under Section 129 of the GST Act, which according to it are permissible in place of major discrepancy and not when there is a minor mismatch on a human technical error in both the invoices as well as E-way bill.

6. We have heard learned advocate Mr. Hardik Modh and learned advocate Mr. Jitendra Modhwani for the petitioner who have urged before us along the line of memo of petition and have also shown the readiness to deposit the entire amount of tax being Rs.14,53,788/- (Rupees Fourteen Lakh Fifty-Three Thousand Seven Hundred Eighty-Eight Only) and also have shown readiness to appear before the concerned authority for hearing of the show-cause notice on the scheduled date i.e. on 16.06.2020. They have also made a request for release of the goods, more particularly, emphasizing on the fact that due to lockdown, the production could not be carried on and there is an urgent requirement of the flavor for the production of the tooth pastes which come under one of the necessities.

7. Issue **Notice returnable on 26.06.2020**. Learned AGP Mr. Sharma waives service of notice for and on behalf of the respondent no.1. Learned AGP also has argued that his submissions on alternative remedy available be kept open of which the Petitioner may take recourse to. He further has

urged that, if at all, the Court intervenes at this stage, the Petitioner may be directed to also deposit penalty which is 100% of the tax amount as has been specified in the very notice. He also has instructions that such penalty amount could be directed to be furnished by way of the bank guarantee till the returnable date.

8. In rejoinder, learned advocate for the petitioner has urged that at the best, the Court may direct Rs. 1,000/- for the penalty or 10% of the total amount of the tax and that too, in the form of bank guarantee, considering the minor mismatch in the address.

9. While permitting the petitioner to serve the respondent nos. 2 and 3 both by an e-mode, considering the issue of closure of the business in the pandemic for a long time and also bearing in mind the material which is being carried from Goa Unit of the petitioner to Sanand, Ahmedabad, for preparing one of the necessities and also noticing that there are two units within the state of Gujarat of the Petitioner registered with the Respondent authorities, we are inclined to

accede to the request of release of the goods with truck bearing No. GJ-01-CU-7154 detained in exercise of the powers, pending the service of notice and admission of this matter, subject to the deposit of the entire amount of tax of Rs. 14,53,788/- with the department within three days and also the deposit of Rs. 1.45 lakhs, 10% of amount of penalty for now with the department, by way of a bank guarantee, initially for the period of 90 days or till the pendency of Petition, whichever is later.

10. With regard to the schedule date of hearing of the show-cause notice under Section 129(3) on 16.06.2020, the petitioner shall appear before the concerned authority and shall cooperate with the hearing of the same and the Authorities shall expedite the hearing.

11. On deposit of total amount of tax and furnishing of the bank guarantee with the department within three days as directed, the release of the truck shall be made within 48 hours, with the goods subject to the furnishing of proof of such amount with the respondent no. 2 or 3.

Direct service is permitted through e mode.

(SONIA GOKANI, J)

(N.V.ANJARIA, J)

MISHRA AMIT V./Bhoomi

