

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 11029 of 2020

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JAY GOGA TRADERS
Versus
STATE OF GUJARAT

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Appearance:
MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 09/09/2020

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicant, a proprietary concern, through its Proprietor has prayed for the following reliefs:

“a. A writ of mandamus, or any other appropriate writ, order and/or directions in the nature of mandamus to quash the order issued by the respondent no.2 for confiscation of perishable goods and levy of penalty under Section 130 of the GST Act;

b. A writ of mandamus, or any other appropriate writ, order and/or directions in the nature of mandamus directing the learned Respondent authorities to forthwith release perishable goods by

quashing and setting aside the detention order issued for such purpose;

c. Alternatively, and without prejudice, to issue a writ of mandamus, or any other appropriate writ, order and/or directions in the nature of mandamus to direct the respondent no.2 to provisionally release the perishable goods u/s 67(6) of the Act;

d. During the admission, hearing and final disposal of the present petition, this Hon'ble court may be pleased to grant an interim relief directing the respondent no.2 to provisionally release the perishable goods detained/seized in purported exercise of powers u/s 129 and 130 of the GST Act;

e. Pass any other order(s) as this Hon'ble Court may deem fit and more appropriate in order to grant interim relief to the Petitioner;

f. Any other and further relief deemed just and proper be granted in the interest of justice;

g. To provide for the cost of this petition.”

2. We have heard Mr. H.V. Vora, the learned counsel for the writ applicant and Mr. Chintan Dave, the learned Assistant Government Pleader for the State respondents.

3. We need not delve much into the facts of this matter as we take notice of the fact that final order of confiscation under Section 130 of the Goods and Services Act, 2017("the Act" for short) has already been passed by the concerned authority. Mr. Vora submitted that as the goods are perishable in nature, this Court may order release of the same.

4. We are unable to accede to the request of Mr. Vora as we are of the view that the client of Mr. Vora should prefer statutory appeal under Section 107 of the Act against the order passed under Section 130 of the Act. Mr. Vora would submit that his client would be filing an appeal in near future.

5. Mr. Vora at this point of time also pointed out that as the final order of confiscation has already been passed, his client has preferred an application for provisional release of the goods and conveyance under Section 67(6) of the Act.

6. We are of the view that such application could have been preferred only after filing of the appeal under Section 107 of the Act. Be that as it may, if an appeal is

filed, the authority concerned shall immediately take up the application filed by the writ applicant for provisional release of goods and conveyance under Section 67(6) of the Act and pass appropriate order in accordance with law, within a period of 8 days thereafter. We clarify that we have, otherwise not gone into the merits of the matter. In view of the above, the writ application stands disposed off. Mr. Chintan Dave, the learned Assistant Government Pleader is requested to communicate this order to the authority concerned so that there may not be any further delay in passing an order on the application under Section 67(6) of the Act.



(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

DRASHTI K. SHUKLA