

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 12754 of 2020

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MAJID BILALBHAI AKBANI PROPRIETOR OF M/S IMRAN IMPEX
Versus
STATE OF GUJARAT & 3 other(s)

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Appearance:
MR TUSHAR HEMANI, SENIOR COUNSEL with MS VAIBHAVI K
PARIKH(3238) for the Petitioner(s) No. 1
MS ML SHAH, GOVERNMENT PLEADER with MR CHINTAN DAVE,
ASSISTANT GOVERNMENT PLEADER for RESPONDENTS

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

Date : 06/11/2020

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 has prayed for the following reliefs:

“(a) to allow the present writ petition;

(b) to quash and set aside the Order of Detention under Section 129(1) of the CGST Act dated 02/10/2020 (Annexure-“A”) issued by the Respondent No.4;

(c) to quash and set aside the Show Cause Notice under Section 130 of the CGST Act dated 02/10/2020 (Annexure-“A1”) issued by the Respondent No. 4;

(d) pending the hearing and final disposal of this petition, to stay the implementation and operation of the Order of Detention under Section 129(1) of the CGST Act dated 02/10/2020 at Annexure “A” to this petition;

(e) pending the hearing and final disposal of this petition, to stay the implementation and operation of the Show Cause Notice under Section 130 of the CGST

Act dated 02/10/2020 at Annexure "A1" to this petition;

(f) pending the admission, hearing and final disposal of this petition, direct the Respondents to release the Conveyance bearing number GJ-04-X-8194 without payment of tax and penalty;

(g) pending the admission, hearing and final disposal of this petition, to direct the Respondents to release the Goods worth Rs. 8,99,160/- without payment of tax and penalty;

(h) pending the admission, hearing and final disposal of this petition, to direct the Respondents to release the Goods worth lo Rs. 8,99,160/- along with the Conveyance bearing number GJ-04-X-8194 without payment of tax and penalty;

(i) any other and further relief deemed just and proper be granted in the interest of justice;

(j) To provide for the cost of this petition."

2. It appears from the materials on record that the writ applicant is engaged in the business of trading of iron and steel and is registered under the provisions of the Central Goods and Services Tax Act, 2017. It is the case of the writ applicant that M/s. Hussain Sheth Enterprise, Bhavnagar, Gujarat had placed an order with the writ applicant for supply of H.M.S. Scrap amounting to Rs. 8,99,160/-. The said goods were to be transported from Gandhidham, Kutch. The goods were loaded in a truck on 25th September, 2020 to be delivered at Bhavnagar, Gujarat. It is not in dispute

that the E-way bill was generated for the period between 25.09.2020 and 29.09.2020. It is also not in dispute that the invoice was also raised.

3. While the goods were in transit, the vehicle was intercepted by the mobile squad of the respondent No.2 on 26th September, 2020 somewhere near Ramdhari, Rajkot-Bhavnagar Road.

4. It appears that notice in Form GST MOV-10 dated 2nd October, 2020 came to be issued calling upon the writ applicant to show cause as to why the goods and the conveyance should not be confiscated under Section 130 of the Gujarat Goods and Services Tax Act, 2017. In the notice in Form GST MOV-10, the following has been stated:

"2. The goods in movement was inspected under the provisions of subsection (3) of section 68 of the Gujarat Goods and Service Tax Act, 2017 read with subsection (3) of section 68 of the Central Goods and Service Tax Act / section 21 of the union territory Goods and Service Tax Act or under section 20 of the integrated Goods and Service Tax Act with subsection (3) of section 68 of the central Goods and Service Tax Act on 26 09 2020 (date) and the following discrepancies were noticed. On 07.08.2020, STO-2, mobile squad Bhavnagar intercepted vehicle no GJ-12-AT-9462 of M/s IMRAN IMPEX and applied section 130 of GST act 2017,

party has accepted the demand raised in mov-10 and not submitted any clarification and paid challan on date 07.08.2020 in which , STO-2, mobile squad Bhavnagar clearly stated following discrepancy In MOV-10 and MOV-11.

“PURCHASE OF IMRAN IMPEX IS FROM 24BFPPG8457Q1Z) / VARUNI INTERNATIONAL AND 24AKWPM436751ZH / RATNARAJ STEEL IS PRIMA FACIE DOUBTFUL, THESE BOTH FIRMS HAVE PURCHASE FROM BOGUS FIRMS AND ARE PASSING ON ITC TO IMRAN IMPEX”

2. Driver has produced a document (Tax invoice and E-way bill), however transactions (mainly it's purchase from VARUNI INTERNATIONAL GSTN: 24BFPPG8457Q12) and RATNARA) STEEL: 24AKWPM4367)12H) of seller M/s Imran Impex GSTN: 24AFUPA2361K1ZE are suspicious and its require further verification hence purchase ledger along with tax invoices with supporting documents like E-way Bills, LR, Weight receipt Etc needs to be submitted this office for verification purpose.

3. After analyzing the transactions, returns filled by the respective firms and data available on E-way bill portal for M/s IMRAN IMPEX GSTN: 24AFUPA2361K1ZE It is observed that M/s IMRAN IMPEX is purchasing their goods from;

- i. Varuni international GSTN: 24BFPPG8457Q1Z)
- ii. SHIMAF CORPORATION GSTN: 24ETCPP2790H12ZI
- iii. DIVYA ENTERPRISE GSTN: 24ASDPS3463N1ZB8
- iv. RATNARAJ STEEL GSTN:24AKWPM4367J12H
- v. UNIVERSAL TRADERS GSTN: 254BYKPT4489V2Z6
- vi. A M TRADING COMPANY GSTN: 24AVMPG6258P1ZX
- vii. A R ENTERPRISE GSTN: 24BPTPV7539E127
- viii. RV ENTERPRISE GSTN: 24BBMPJ6668K1Z2

After analyzing history on e-way bill portal above firms mentioned above, it is observed that these firms are suspicious in prima facie, and it may be possibilities that these firms are issuing bills only without supplying goods for passing of ITC only for evading tax. Hence, M/s IMRAN IMPEX needs to produce following details for proving genuineness of their transactions and their claim on ITC.

- 1) Purchase ledger of these firms (party wise)*
- 2) Photocopy of tax invoices, e-way bills, other supporting documents like weight receipts, LR etc.*
- 3) Payment proof of freight to transporter particularly for transactions with these firms.*

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5. After analyzing purchase history and ITC claim of M/s IMRAN IMPEX is shown from M/s Varuni international GSTN: 24BFPPG8457Q1ZJ. However, after analyzing the return filled by Varuni International, it is observed that huge billing activities involved in this case and huge amount of bills issued without having valid purchase in their books, hence detailed investigation required in this case. Hence all documents of M/s Imran Impex related to Varuni International i.e. Purchase ledger, Tax invoices, E-way bills, LR, Weight receipts, the name of person and his contact details with whom these transactions carried out needs to be submitted this office for further investigation.

Based on above 5 points and details mentioned above it is clear that, M/s IMRAN IMPEX GSTN: 24AFUPA2361K1ZE is doing their purchase related transactions for obtaining bogus bills and claiming ITC fraudulently and its looks like passing of ITC wrongly for evading tax purpose only, hence vehicle no. GJ-04-X-8194 has intercepted and section 130 applied in this case."

5. Being dissatisfied with the seizure of the goods and vehicle and also the issue of notice in Form GST MOV 10, the writ applicant has come up with the present writ application.
6. Mr. Tushar Hemani, the learned Senior Counsel assisted by Ms. Vaibhavi K. Parikh, the learned counsel for the writ applicant vehemently submitted that there is no contravention worth the name of any provisions of the GST Act or the Rules made thereunder. It is argued that the driver of the vehicle had all the necessary documents which were required to be in his possession as per Rule 138A of the GST Rules. It is argued that the respondent No.4 has wrongly invoked the provisions under Section 129 of the GST Act by passing the impugned order of detention as Section 129 of the GST Act talks about the detention, seizure and release of goods and the conveyances in transit. It is further pointed out by Mr. Hemani that the show cause notice has been issued on the assumption that the past transactions of the writ applicant are doubtful and therefore, a detailed

inquiry is required in the matter. It is also argued that the supplier from whom the writ applicant purchased the goods, namely, M/s. Shiv Shakti Trading Company, has issued the purchase bill and the same was verified by the respondent No.2 on 29th September, 2020.

7. It is also argued that the conditions enumerated under Sub-Section (1) of Section 130 of the GST Act are not fulfilled in the present case. In short, the argument of Mr. Hemani is that Section 130 of the GST Act cannot be invoked (a) for the past transaction and (b) even when the supplier had accepted and paid taxes, penalty or other duties under Section 130 of the GST Act for such past transaction.

8. In such circumstances referred to above, Mr. Hemani prays that there being merit in his writ application, the same be allowed and the show cause notice in the Form GST MOV-10 be quashed and set aside. He prays that the goods and the conveyance be ordered to be released forthwith.

9. On the other hand, this writ application has been vehemently opposed by Ms. M.L. Shah, the learned Government Pleader appearing with Mr. Chintan Dave, the learned Assistant Government Pleader for the State. Ms. Shah submitted that the matter in question is one of a large-scale fraud. According to Ms. Shah, this is the case of bogus billing without transit or delivery of goods only for the purpose of claiming input tax credit.
10. Ms. Shah would argue that although the driver of the vehicle was able to produce the E-way bill and the invoice, yet, the department is inquiring as to in what manner the writ applicant procured the goods to be supplied to the purchaser. According to Ms. Shah, if the procurement of the goods itself is bogus, then, such goods can always be confiscated under Section 130 of the GST Act.
11. Ms. Shah invited the attention of this Court to the few averments made in the affidavit in reply, relevant part of which we reproduce hereunder:

“6. Without prejudice to whatever is_ stated herein above, even on merits the case of the petitioner is on a weaker side. In this regard it is most respectfully submitted before this Hon’ble Court that the petitioner has a habit of defrauding Government Revenue. Recently on 07/08/2020 the conveyance carrying the goods of the petitioner was detained on the ground that the transactions entered into by the petitioner with Varuni International are bogus in nature. In this regard notice for confiscation of goods was issued upon the petitioner in FORM GST MOV-10 on 07/08/2020. However, the petitioner immediately made the payment of fine in lieu of confiscation along with tax and penalty and the goods were accordingly released by the respondent authorities. A copy of notice for confiscation issued by the respondent authorities in FORM GST MOV-10 is annexed hereto and marked as Annexure -A.

7. It is the case of the petitioner in the present writ petition before this Hon’ble Court that there is no violence of any of the provisions of GST Act and the documents as required under Rule 138A of the CGST Rules were available with the driver of the conveyance when the goods were detained by the authorities. In the facts of the present case the said submission of the petitioner is admittedly incorrect and contrary to records. In this regard the attention of this Hon’ble Court is drawn to the nature of transaction. Accordingly, to the petitioner himself one M/s. Hussain Sheth Enterprise, Bhavnagar had placed an order with the petitioner for HMS Scrap. The goods were to be picked up from Shiv Shakti Trading Company, Gandhidham and same were to be delivered to M/s. Hussain Sheth Enterprise, Bhavnagar. However, the petitioner neither before the authorities nor before this Hon’ble Court has generated or produced the e-way bill of Shiv Shakti Trading Company. The only e-way bill that is produced is for the so-called movement of goods from the office of the petitioner to the said M/s. Hussain Sheth Enterprise, Bhavnagar. However, the petitioner failed to generate and/or produce the e-way bill for purchase of goods from M/. Shakti Trading Company. Therefore, admittedly there is a clear violation of the Rule 138A and therefore the said argument of the petitioner with regard to compliance of Rule 138A of the CGST Rules is without any basis. Ironically in the past when the petitioner has purchased scrap from M/s. Shiv Shakti Trading Company, the petitioner has generated e-way bills for the said transactions and for the reasons best

known for the transaction in question the petitioner has failed to generate and/or produce any e-way bill for the purchase of scrap from M/s Shiv Shakti Trading Company. Hence, the authorities were well within their powers to initiate proceedings under section 130 of the GST Act. A copy of statement of evidencing the generation of e-way bills for purchase of scrap by the petitioner from M/s. Shiv Shakti Trading Company in the recent past is annexed hereto and marked as Annexure-B.

8. It is further submitted before this Hon'ble Court that the petitioner in the month of September 2020 has generated as many as 10 e-way bill that has given rise to great amount of suspicion. If the e-way bill no. ending with 5386 is compared with e-way bill no. ending with 9288, it will be clear that the same vehicle no. is being shown at two different places at almost the same time which is physically impossible. The e-way bill no. ending with 5386 has shown a dispatch from Surat to Gandhidham on 08/09/2020 at 5.38 pm. The distance between Surat to Gandhidham is approximately 549 km. Surprising the e-way bill no, ending with 9228 is generated on 09/09/2020 at 5.48 pm for a dispatch from Himmatnagar to Vapi the distance between Himmatnagar to Vapi is around 417 km. The truck no. GJ09-Z-1622 is supposedly used in both the e-way bills for ferrying the goods. In other words, the truck bearing no. GJO9-Z-1622 will start at around 5.30 pm on 08/09/2020 from Surat and will reach Gandhidham which is around 550 km in 24 hours. Thereafter the same truck with Jet Speed will reach Himmatnagar on 09/09/2020 and after loading the goods will again reach Vapi that is around 417 km away from Himmatnagar. Hence, the transaction that the petitioner has undertaken created a reasonable apprehension in the minds of the respondent authorities and therefore the provisions as contained Section 130(1) (iv) that refers to contravention with an intent to evade payment of tax are attracted. Therefore, the respondent authorities have rightly issued the impugned show-cause notice and has called upon the petitioner to show the details of goods that are being transported in the transaction that is under consideration. Copies of the e-way bills that are generated by the petitioner and are admittedly in doubtful is nature are annexed hereto and marked as Annexure-C(COLLY).

9. In light of above it is crystal that in the months of

August 2020 and September, 2020, the petitioner has entered into numerous bogus transactions. The petitioner has_ therefore violated the provisions of the GST Act and hence the respondent authorities were constrained to initiate proceedings under the GST Act. At present the petitioner is simply called upon to submit the details of the transactions in question and if the same are found in order, the respondent authorities are under a statutory obligation to pass appropriate orders in accordance with law with regard to the release of goods. However, the petitioner is not having requisite documents and hence the petitioner has approached this Hon'ble Court contending that the respondent authorities are deliberating to declare the petitioner as a proclaimed offender. However, in light of the above submissions, the factual scenario is otherwise. Hence, the present petition is devoid of any merits whatsoever and the same deserves to be dismissed."

12. Ms. Shah would submit that as the inquiry is in progress, it is expected of the writ applicant to cooperate in the inquiry and file his appropriate reply to the show cause notice.
13. In such circumstances referred to above, Ms. Shah prays that there being no merit in this writ application, the same be rejected.
14. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that we should not interfere at this stage of show cause notice as the inquiry is in progress. However, considering the fact that when the vehicle was intercepted, the driver was

able to produce a valid E-way bill and also the invoice, at least, the goods and the conveyance should be ordered to be released subject to the final outcome of the confiscation.

15. We do not propose to observe anything further as the same may cause prejudice to either of the parties. We dispose of this writ application with a direction to the respondent No.2 to release the vehicle and the goods after obtaining a bond of Rs.11,73,480/- from the writ applicant. The inquiry with respect to Form GST MOV-10 shall proceed further in accordance with law.

16. With the above, this writ application stands partly allowed.

THE HIGH COURT
OF GUJARAT

WEB COPY

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

A. B. VAGHELA/A.M.PIRZADA