

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13354 of 2020**

M/S SURYA ROADWAYS

Versus

SENIOR INTELLIGENCE OFFICERS (SIO)

Appearance:

GAURANG A VAGHELA(8340) for the Petitioner(s) No. 1

RAVAL AND TRIVEDI ASSOCIATES(9262) for the Petitioner(s) No. 1

MR DEVANG VYAS(2794) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 28/01/2021

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) This Hon'ble Court may be pleased to issue an appropriate writ and/or writ of mandamus, order or direction and/or appropriate writ, order or direction quashing and setting aside the impugned orders of seizure dated 01.07.2020, 15.09.2020 and 18.09.2020, being illegal and passed without any application of mind;

(B) This Hon'ble Court may be further pleased to issue an appropriate writ and/or writ of mandamus, and/or appropriate writ, order or direction directing that the very initiation of the search proceedings by the respondent authority is without any authority of law;

(C) This Hon'ble Court may be further pleased to issue an appropriate writ and/or writ of mandamus and/or appropriate writ, order or direction holding that the action of the respondent authority in issuance of summons under Section 70 of the GST Act dated 01.07.2020, 14.07.2020 and 24.08.2020 is arbitrary and colorable exercise of powers;

(D) Pending the admission, hearing and final disposal of the present petition, this Hon'ble Court may be pleased to stay further proceedings as initiated by the respondent authority vide the so-called authorization dated 01.07.2020;

(E) Pending the admission, hearing and final disposal of the present petition, this Hon'ble Court may be pleased to restrain the respondent authority from taking any coercive steps against the petitioner;

(F) This Hon'ble Court may be pleased to pass any other appropriate order, as deemed fit, in the interest of justice.”

2. The controversy involved in the present litigation is in a very narrow compass. The writ applicant is a transporter and is carrying on business in the name of M/s. Surya Roadways. In the case on hand, we are concerned with two trucks of the ownership of the writ applicant, which came to be seized by the officers of the GST in the purported exercise of powers under Section 129 of the GST Act, 2017. The seizure of the two trucks of the ownership of the writ applicant is on the basis that in the past these two trucks were used for transporting the goods in contravention of the provisions of the Act and the Rules. In this regard, an inquiry has been initiated and the same is pending as on date. It appears that a summons under Section 70 of the Act was issued to the writ applicant and according to respondent, the writ applicant has not

honoured the summons. There is one person by named Shri Saunak Desai, against whom, allegations are being leveled by the Department of fraud etc., The statement of Mr. Saunak Desai has been recorded and in his statement, the name of the writ applicant has surfaced.

3. We have heard Mr. Maulin Raval, the learned Senior Counsel assisted by Mr. Gaurang Vaghela, the learned advocate appearing for the writ applicant and Mr. Devang Vyas, the learned Additional Solicitor General of India, assisted by Mr. Parth Divyeshwar, the learned standing counsel appearing for the respondents.
4. The short point for the consideration of this Court is whether the two trucks could have been seized under Section 129 of the Act, 2017, more particularly when both the trucks were not in transit carrying any goods. Indisputably both the trucks were seized from the office premises of the writ applicant. The department has doubts with regard to some past transactions.
5. We do NOT want to interfere with the inquiry or investigation which has been undertaken. Such inquiry or investigation shall proceed further in accordance with law. We propose to dispose of this writ application with an order of release of the two trucks subject to certain terms and conditions. We may only observe that at the end of the inquiry or investigation, if anything incriminating surfaces which may warrant issuance of MOV-10 to the writ applicant under Section 130 of the Act, the authority may do so in accordance with law. However, today, for the purpose of such inquiry or investigation, the two trucks may not be kept in the custody of the department. In such circumstances referred to above,

we direct the respondent to release both the trucks on the writ applicant furnishing an undertaking in writing on oath before the concerned authority that till the conclusion of the inquiry or investigation, he shall not transfer the two trucks in favour of any other person or shall not part with the possession of the same or create any encumbrance upon the same. It shall be open for the writ applicant to use the two trucks in his normal course of business. We are saying so because in the event if the department deems fit to issue MOV-10 under Section 130 of the Act, 2017, then at least the goods should be secured for that purpose.

6. We dispose of this writ application with the aforesaid directions. We clarify that we have otherwise not gone into the legality and validity of the inquiry or investigation. We once again reiterate that it is for the department to carry out the necessary investigation in accordance with law.
7. We also expect that the writ applicant to cooperate in the investigation pursuant to the summons issued under Section 70 of the Act. We expect the writ applicant or any of his legal representative to appear before the appropriate authority for the purpose of interrogation or recording of the statement.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

P.S. JOSHI