

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 12712 of 2020

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SHRI ANANT JIGNESH SHAH, PROPRIETOR OF M/S. NAKODA AND
COMPANY

Versus
THE UNION OF INDIA,?
THROUGH THE UNDER SECRETARY, & 2 other(s)

=====

Appearance:

MR TUSHAR HEMANI, SENIOR COUNSEL with MS VAIBHAVI K
PARIKH(3238) for the Petitioner(s) No. 1
MR CHINTAN DAVE, ASSISTANT GOVERNMENT PLEADER for
RESPONDENT NOS. 2 AND 3.

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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 quash and set aside the Order and Detention
under Section 129(1) of the CGST Act dated 13/09/2020
(Annexure-“A”) issued by the Respondent No.2;*

*(b) to quash and set aside the Show Cause Notice
under Section 130 of the CGST Act dated 15/09/2020
(Annexure -“A1”) issued by the Respondent No.2;*

*(c) pending the admission, 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 at Annexure-“A” to this petition;*

*(d) pending the admission, 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 at Annexure-“A1” to this petition;*

(e) direct the Respondent No.3 to release the Conveyance of petitioner;

(f) direct the Respondent No.3 to release the Goods worth Rs.35,74,155/- along with the Conveyance;

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

(h) 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 pan masala and is registered under the provisions of the Central Goods and Services Tax Act, 2017 ("the Act" for short). The writ applicant had placed an order with one M/s. Atharva Enterprises, Ujjain, Madhya Pradesh for supply of pan masala amounting to Rs. 35,74,155/-. The said goods were to be transported from Ujjain, Madhya Pradesh on 8th September, 2020 in a vehicle bearing No. MP-13-GA-9108 and were to be delivered at Ahmedabad, Gujarat.

3. It is not in dispute that the E-way bill generated was valid for the period between 08.09.2020 and 13.09.2020. On 12th September, 2020, the vehicle carrying the goods came to be intercepted by the mobile squad of the respondent No.2. On 13th

September, 2020, the respondent No.2 passed an order of detention under Section 129(1) of the Act in Form GST MOV-06. Thereafter, notice in Form GST MOV-10 dated 15th September, 2020 came to be issued.

4. Being dissatisfied with the issue of notice in Form GST MOV-10 referred to above, the writ applicant has come up with the present writ application.
5. We have heard Mr. Tushar Hemani, learned Senior Counsel assisted by Ms. Vaibhavi K. Parikh, learned counsel for the writ applicant and Mr. Chintan Dave, the learned Assistant Government Pleader, appearing for the respondent State.
6. The show cause notice in Form GST MOVE-10 issued by the State talks about the following contraventions:

“For selling goods to trader Nakoda & Company, Ahmedabad, having office at Shahibag, Ahmedabad, Gujarat, having GSTIN No. 24BQDPS09883, trader Atharva Enterprise 17, Shriram Colony, Yantra Mahal Marg Ujjain, having GSTIN No. 23BKFPS2904B2ZM had generated E-way Bill No. 631216432684 on 08.09.2020. Thereafter, on 09.09.2020, they had gone to Ujjain by taking goods together with E-way bill Nos. 681216854838, 681216855819, 631216832772 etc. and had returned on 12.09.2020 by loading the goods from Ujjain. At that time, the tax bill dated 8.9.2020 was produced when the vehicle was intercepted. On asking

as regards second round for the said goods, it was stated that on 8.9.2020, they had loaded vegetables, which goods were unloaded by them at Ahmedabad and the purchaser has given statement on the letter pad that they have ordered the goods of the bill dated 8.9.2020 at present, which is caught by you. It has been stated that they have earlier not taken goods on the said bill. On checking the said vehicle, it has gone at the Toll Tax on 9.9.2020 and again on 12.9.2020, it has arrived from Madhya Pradesh and evidence in that regard are produced and submissions are made by the purchaser trader and as the pan masala being sensitive commodity, the submission of the trader is not accepted. And second round is counted. Thus, in the said case, as the trader has generated E-way bill but has transported the goods twice on the very same bill, proceeding is initiated under Section 130 of the Gujarat Goods and Services Tax Act and the Rules.”

7. We are of the view that the ground on which the authority proposes to confiscate the goods and the vehicle is not tenable in law. The show cause notice appears to have been issued on an assumption that the driver of the vehicle might have indulged in the past in contravention of the provisions of the Act and the Rules made thereunder. It appears the entire basis for the issue of the show cause notice is conjectures and surmises.
8. The goods and the vehicle can be detained under Section 129 of the Act only if such goods are transported in contravention of the provisions of the Act or the Rules made thereunder. We specifically

inquired with Mr. Dave, the learned Assistant Government Pleader as to whether any provision of the Act or the Rules could be said to have been contravened with regard to the transaction in question. Mr. Dave, with his usual fairness pointed out that when the goods were in transit and detained, it cannot be said that there was any contravention of the provisions of the Act or the Rules. However, according to Mr. Dave, the authorities have grave suspicion that the driver of the vehicle might have entered Ahmedabad on the same E-way bill and might have succeeded in getting out thereafter without payment of any tax. Thus, the case of Mr. Dave, the learned Assistant Government Pleader is one of evasion of tax for some transaction which is unknown.

9. The show cause notice under Section 130 of the Act cannot be issued on a mere suspicion. There has to be some prima facie material on the basis of which the authority may arrive at the satisfaction that the goods are liable to be confiscated under Section 130

of the Act.

10. In such circumstances referred to above, we are left with no other option but to quash and set aside the notice in Form GST MOV-10 dated 15th September, 2020. It is hereby ordered to be quashed. We clarify that if there is any other inquiry to be made as regards any other transaction, it is open for the authority to initiate and carry out such inquiry. With the above, this writ application stands allowed.

(VIKRAM NATH, CJ)

A. B. VAGHELA/A.M.PIRZADA

(J. B. PARDIWALA, J)

THE HIGH COURT
OF GUJARAT

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