

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 2776 of 2022
With
CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 2776 of 2022
With
CIVIL APPLICATION (FOR FIXING DATE OF HEARING) NO. 3 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 2776 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 17881 of 2022

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MADHAV COPPER LIMITED
Versus
STATE OF GUJARAT

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Appearance (**SCA 2776 OF 2022**):

MR. TUSHAR HEMANI, SR. ADV. WITH MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1
MR. MANAN MEHTA, AGP for the Respondent(s) No. 1
MR PRANAV G DESAI(290) for the Respondent(s) No. 3
NOTICE SERVED BY DS for the Respondent(s) No. 1,2

Appearance (**SCA NO. 17881 OF 2022**):

MR. TUSHAR HEMANI, SR. ADV. WITH MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1
MR. MANAN MEHTA, AGP for the Respondent(s) No. 2, 5-7 & 10
MR PRANAV G DESAI(290) for the Respondent(s) No. 3
MS. KHYATI CHUGH FOR RESP.NO.4
MR. H.S.MUNSHA FOR RESP. NO.9

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 10/04/2023

COMMON ORAL ORDER
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

These two Special Civil Applications are interactive. Therefore, they were heard together to be treated for disposal by this common order.

2. The petitioner company engaged in the business of copper and copper scrap faced certain serious allegations in respect of wrongful availment of Input Tax Credit in respect of the financial year 2017-2018 to financial year 2020-2021 comprising of the period beginning from April 2021 to July, 2021, thus extending to financial year 2021-2022.

3. Upon a search carried out against the petitioner company, the Goods and Service Tax Authorities allegedly found that the petitioner was engaged in the purchase of goods from 39 fictitious business firms and fake purchases for all those financial years to the tune of Rs. 770.64 crores were wrongfully made to avail the Input Tax Credit of Rs. 138.71 crores. The authorities termed it as a financial scam committed by the petitioner-company to decide to proceed against the petitioner in accordance with law.

3.1 The provisional attachment order dated 26.7.2021 invoking powers under section 83 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the GST Act') was passed against the petitioner. The provisional attachment order covered the properties as well as the bank accounts of the petitioner. The said orders

dated 08.07.2021/26.7.2021 became the subject matter of challenge in the first captioned Special Civil Application No. 2776 of 2022.

3.2 While the said first petition is still pending, what is to be noticed from the said proceedings with relevance at this stage, is the interim order dated 4.5.2022 passed by the court. Certain observations made and directions were passed in the said order to regulate the rights and obligations between the petitioner and the service tax authorities. In order to protect the interests of the Bank, the arrangement was worked out as detailed in paragraph Nos. 9 and 10 of the order.

3.2.1 Those directions are reproduced hereinbelow to rest the reference of the said petition there, extracting para 9,

9. With a view to protect the interest of the Bank as well as department, we want the writ applicant to file an undertaking on oath before this Court and the department as under:

“(a) Madhav Copper Ltd. would also intimate and ensure that amounts receivables from the list of all the 47 debtors, which are under provisional attachment of the department, would be received only in the Current Account Nos.03480200000834, maintained with Bank of Baroda, Main Branch, Bhavnagar;

(b) The finished goods lying in the factory premises and are under provisional attachment of the department, would be supplied only to the public sector entities such as Bharat Heavy Electricals Limited, Indian Railways, etc. and two foreign contracts of Sri Lanka and United Kingdom, after following all the required procedure and in accordance with the provisions of the GGST Act;

(c) The raw materials lying in the factory premises and are under provisional attachment of the department, would be utilised for manufacturing finished goods, only to complete the past contractual obligations received from Bharat Heavy Electricals Limited, Indian Railways and such other public sector entities, after following all the required procedure and in accordance with the provisions of the GGST Act;

(d) The writ applicant would not be using/utilizing any of the aforesaid amounts so received by the writ applicant in the Current Account No.03480200000834 maintained with Bank of Baroda, Main Branch, Bhavnagar and the said account would continue to be under provisional attachment of the department;

(e) The amounts transferred in the Cash Credit account from the Current Account will not be disturbed and that equivalent balance of the said amounts in the Cash Credit Account would be maintained at any given point of time.

(f) The writ applicant will ensure that the raw materials, stock and finished goods, would be dealt with in any manner under the supervision of the Deputy Commissioner of State Tax, Enforcement, Bhavnagar.”

3.2.2 In paragraph No.10, it was stated,

“10. The respondent No.3- Bank is also directed to file an undertaking before this Court and the department through a Responsible Officer as under:

“(a) The writ applicant would not be permitted to use/utilize the amounts credited in the Current Account No.03480200000834;

(b) The writ applicant would not be permitted to use the amounts transferred in the Cash Credit Account No.03480500000073 from the Current Account No.03480200000834 by virtue of order dated 04.05.2022;

(c) It would be ensured that equivalent balance of the amount so transferred in the Cash Credit Account from the aforesaid Current Account, by virtue of order dated 04.05.2022, would be maintained at any given point of time.”

3.3 Section 83 of the Act, which deals with the provisional attachment to protect the interest of revenue in certain cases, in its sub-section (2) provides that every such provisional attachment ceases to have its effect after expiry of period of one year from the date of order made under sub-section (1). In view of operation of the said provision, the life of order dated 26.7.2021 came to an end on 25.7.2022. Thus the order of provisional attachment dated 26.7.2021 has now worked out its life of one year.

3.4 It appears that while the aforesaid date of 25.7.2022 was yet to approach, the competent authority passed another order re-exercising powers under section 83 of the Act. The provisional attachment order was passed for second time on 8.7.2022. The said order came to be called in question by the petitioner by filing subsequent Special Civil Application No. 17881 of 2022. The prime and primary contention of the petitioner to assail the second provisional attachment order dated 8.7.2022 was that section 83 of the Act contemplates passing of such order only once, and that there no power is available to the competent authority to repeat the provisional attachment after period of one year mentioned in sub-section (2) of section 83 gets over. In another words, it was

contended that there was no power with the authorities to extend the provisional attachment beyond one year. Be as it may.

3.5 In view of the nature of the order passed hereinbelow, the court is not required to go into the merit of the said contention about competency of the authority to pass second provisional attachment order after expiry of one year.

4. Coming back to the prayers made in the second Special Civil Application, it is firstly prayed to declare that the respondents have no power or authority to issue fresh order of provisional attachment. The second prayer is to set aside the attachment order dated 8.7.2022 produced at annexures in the petition. Thirdly it is prayed to declare that the respondents have no authority to direct the closure of the industry of the petitioner by passing the provisional orders of attachment and cancelling the registration of GSTIN and issuance of direction to block the input tax credit.

4.1 In view of the allegations levelled against the petitioner, the registration of the petitioner under the GST Act has been cancelled. Learned senior advocate Mr. Tushar Hemani with learned advocate Mr. Avinash Poddar stated that the petitioner has filed appeal against the

order of cancellation of registration before the competent appellate authority. He further stated upon instructions from the petitioner that the petitioner is ready and willing to pay up the admitted liability of tax amount as reflected on the portal of the authorities to be discharged by the petitioner.

4.2 As the concession in that regard has been coming forth from the petitioner, the prayer about cancellation of registration made in the petition may be dealt with at the out set.

5. Since learned senior advocate for the petitioner makes a statement before the court that the petitioner would pay before the appellate authority the entire amount of admitted tax liability as reflected on the portal of the authorities as on date within one week from the date of receipt of copy of this order, once such amount of admitted tax is paid before the appellate authority, the consequence in that regard in favour of the petitioner would follow and the appellate authority would pass appropriate orders setting aside the cancellation of registration. This will have the effect of permitting the petitioner to file its return of the previous years during which the registration was cancelled in physical form.

5.1 In light of the request made on behalf of the petitioner for expeditious disposal of the appeal, which is reasonable, it is observed and provided that the appellate authority shall decide the appeal of the petitioner in respect of cancellation of the registration within eight weeks, in accordance with law.

5.2 As far as the challenge to the second provisional attachment order dated 8.7.2022 is concerned, the developments at the end of the competent authorities would guide the future course of action.

5.2.1 In the affidavit dated 27th September, 2022 filed by the Assistant Commissioner of State Tax (6), Enforcement Division-2, Ahmedabad it was the stand evinced *inter alia* that the department would issue intimation of statement of liability in form DRC-01A within short span of time and thereafter show cause notice would also be issued. In furtherance of the aforesaid statement, the competent authority has acted and show cause notices are issued under section 74 of the Act. In this regard, it is mentioned in further affidavit dated 24th March, 2023 that the respondent authorities had issued intimation dated 14.11.2022. Learned Assistant Government Pleader Mr. Manan Mehta stated before the court upon instructions from Lakhdhirsinh B. Rathod, Assistant Commissioner of State Tax (6), Enforcement Division-2, Ahmedabad, that thereafter

formal show cause notice dated 31.3.2023 has also been issued to the petitioner.

5.2.2 The petitioner is not in a position to dispute the issuance and receipt of the above show cause notice. The show cause notice issued is in respect of all the five financial years in respect of which the allegations against the petitioner about wrongful availment of Input Tax Credit are made.

5.2.3 In other words, with the issuance of show cause notice as above under section 74 of the Act, there is no gainsaying that the proceedings for adjudication have commenced. As the adjudication proceedings have begun, and the petitioner would be participating in the said proceedings by filling its reply and availing reasonable opportunity of hearing, which will be extended by the authorities, the legality and validity of second provisional attachment order need not to be gone into.

6. It would be rather a proper course to be adopted to direct the authorities to complete the adjudication proceedings time-bound. Once the proceedings are over, the rights of the parties shall stand crystallized leaving the order of provisional attachment to its own fate.

6.1 Learned senior advocate for the petitioner stated that the petitioner will file its reply on or before 15.4.2023.

6.2 At this stage, learned Assistant Government pleader makes a statement that the competent authority shall complete the entire proceedings including passing of the appropriate order within six weeks from the date of receipt of reply.

6.3 It is directed that the adjudicatory proceedings shall be completed within six weeks from the date of receipt of copy of reply.

6.4 In the aforesaid view, Special Civil Application No. 17881 of 2022 is disposed of without going into the aspect of validity of the impugned order of provisional attachment, by directing the competent GST authorities to proceed to adjudicate the show cause notice after giving reasonable opportunity to the petitioner including to file reply to defend its case, within a time-bound period.

6.5 This court has not expressed any opinion on the merits of the case of the petitioner.

7. At this stage, learned advocate Mr. Pranav Desai appearing for the respondent-Bank submitted that in course of proceedings of earlier

Special Civil Application No. 2776 of 2022, the court had passed order dated 4.5.2022, in which the directions were given regarding maintaining and operating the current account and cash credit account of the petitioner to ensure that the financial interests of the Bank are not jeopardised in any way. He submitted that since the dispute between the parties and the legal proceedings in that regard are pending and adjudication would be a time-bound exercise, the arrangement made in the interim order passed in the first petition may be continued till the show cause notices are finally adjudicated. The submission could be countenanced, as the request made is reasonable, not capable of being opposed by either of the side including the petitioner.

7.1 Therefore, the arrangement in order dated 4.5.2022 reproduced in para 3 above of this order, shall continue to operate till the competent GST authority completes the adjudication proceedings and pass necessary orders.

8. Except that the aforesaid arrangement provided for by the court in earlier petition is made part of the order of this petition, the earlier Special Civil Application challenging the first provisional attachment order would not survive for any further consideration in view of the subsequent developments and in light of passing of the present order.

9. In that view, learned senior advocate for the petitioner seeks to withdraw the Special Civil Application No. 2776 of 2022. Therefore, it is disposed of as withdrawn. Interim relief is vacated, except the above part of arrangement continued in the present order.

The Civil Applications will not survive in view of disposal of the main petition.

10. Both the petitions stand disposed of as above. Notices are discharged. Interim relief is vacated subject to above order and directions.

The above order, in both the petitions, are passed without prejudice to the contentions of the either party which they may raise, as may be available, in accordance with law in the competent proceedings they will be commencing.

(N.V.ANJARIA, J)

(D. M. DESAI, J)

C.M. JOSHI