
(2014) 02 GUJ CK 0024
In the Gujarat High Court

Case No : Special Civil Application No. 959 of 2014

Atul Motors Pvt. Ltd. and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Citation : (2014) 69 VST 289

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Uchit N. Sheth, Advocate for the Appellant; Jaimin Gandhi, Additional Government Pleader, Advocate for the Respondent

Judgement

Akil Kureshi J.

1. On January 22, 2014, the court had passed the following order:

(1) The petitioners are the authorised distributors of Maruti cars. They have been filing returns under the Value Added Tax Act, 2003 (hereinafter referred to as "the Act") regularly. It is the contention of the petitioners that they recover certain handling charges from the customers, which are in the nature of post-sales services. On such handling charges, according to them, they are not required to pay the value added tax (hereinafter referred to as "VAT"), since such handling charges cannot form a part of sale value of the car. The respondents carried out search operations in the premises of the petitioners on December 25, 2013 and raised the issue of non-payment of VAT on handling charges.

(2) The learned counsel for the petitioner submitted that under coercion the petitioners were made to make e-payment of Rs. 15,28,972 and Rs. 24,323 in two separate payments. Over and above this, the respondents have also under duress taken three cheques from the petitioners. Total amount of such cheques is to the tune of Rs. 1,86,12,518. The learned counsel for the petitioner further submitted that so far there has been no adjudication on this issue and no

assessment orders have been passed by the authorities. He submitted that in absence of any quantified demand, the respondents cannot recover the same. The petitioners are ready and willing to participate in any adjudication proceedings and put forth their point that they are not required to pay any tax under the Act on the handling charges so recovered by them. In any case, without any finalised demand, the coercive recovery would not be permissible.

(3) Issue notice, returnable on February 14, 2014. Till further orders, the respondents shall not deposit for encashment the three cheques issued by the petitioners. Direct service is permitted.

2. In response to the notice issued, the respondent had appeared and filed reply.

3. Upon hearing learned counsel for the parties, the controversy in the present petition gets substantially narrowed down. The case of the petitioner is that there could be no recovery of tax dues unless and until the tax demand is crystallized. In absence of any assessment, the respondent cannot recover taxes.

4. On the other hand, learned Additional Government Pleader relied on the affidavit-in-reply to contend that in any case, the power for passing provisional attachment order is not taken away.

5. From the affidavit-in-reply filed by the respondents, we do not notice any ground permitting the respondents to start recovery at this stage. The insistence on collecting cheques from the petitioners, therefore, cannot be countenanced. Under the circumstances, the respondents shall return three cheques collected from the petitioner to them latest by February 28, 2014. This is without prejudice to the power of the competent authority to pass appropriate order, if so found necessary to protect the interest of the revenue.

6. The petition is disposed of accordingly.