(2014) 06 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 7461 of 2014

Bhavesh Trading Co. APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2014) 73 VST 166

Hon'ble Judges : Mukesh R. Shah, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

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

Judgement

@

Mukesh R. Shah, J.—Rule. Mr. Jaimin Gandhi, learned Additional Government Pleader, waives service of rule on behalf of the respondents. Under the facts and circumstances of the case, and with the consent of the parties, the present petition is taken up for final hearing today.

2. By way of this petition, under article 226 of the Constitution, the petitioner has prayed for the following reliefs:

(A) This honourable court may be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the recovery proceedings without due process of law as being arbitrary and ultra vires the provisions of the VAT Act and article 14 of the Constitution of India.

(B) This honourable court may be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ, order or direction for immediate return of the cheques numbers 000111 and 000113 drawn on Bank of Baroda of amounts totalling to Rs. 3,08,50,688.

(C) This honourable court may be pleased to issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction prohibiting the learned officers of the Commercial Tax Department from taking coercive measures of recovery against.

(D) This honourable court may in any case be pleased to declare that no tax or interest is payable by the petitioners under the VAT Act without passing of orders under the VAT Act.

3. The learned advocate Mr. Uchit Sheth appearing for the petitioners has vehemently submitted that without passing any assessment order and crystallizing the tax demand, the respondents have recovered three cheques totalling to Rs. 3,08,50,688. Mr. Sheth relying upon the order Atul Motors Pvt. Ltd. and Another Vs. State of Gujarat and Another, passed by the Division Bench of this court in SCA No. 959 of 2014, has requested to allow the present petition by quashing and setting aside the action of the respondents in collecting the cheques from the petitioners without passing any assessment orders and/or crystallizing the tax demand and to direct the respondents to return the said cheques to the petitioners.

4. Mr. Gandhi, learned Additional Government Pleader, has vehemently submitted that the adjudication proceedings are already initiated and show-cause notices are already issued. It is submitted that as such to protect the interest of the Revenue, it has been, prima-facie, found on investigation that the petitioners would be liable to pay the amount of Rs. 3,08,50,688 including the penalty, and therefore, in the larger public interest, the cheques for the aforesaid amount have been recovered by the Department from the petitioners. However, as such there is no final assessment order or provisional assessment order passed against the petitioners and the assessment proceedings are as such at the show-cause state.

5. Heard the learned advocates appearing for the respective parties. At the outset, it is required to be noted that the respondents have recovered the cheques totalling to Rs. 3,08,50,688 from the petitioners towards the future tax demand and/or liability of the petitioners. However, it is required to be noted that as such the assessment proceedings are not completed and neither any provisional assessment order nor final assessment order has been passed against the petitioner crystallizing the tax demand. The identical question came to be considered by the Division Bench of this court and the Division Bench vide order Atul Motors Pvt. Ltd. and Another Vs. State of Gujarat and Another, , has quashed and set aside the action on the part of the respondents collecting the cheques from the petitioners without passing any final assessment order either provisional and/or final assessment order crystallizing the tax demand. In view of the reasons stated above, the present petition succeed in part and the action of the respondents in collecting the cheques totalling to Rs. 3,08,50,688, as mentioned in para. 32(B) of the petition, without passing any final assessment order and/or without passing any provisional assessment order and without

crystallizing the tax demand, is hereby quashed and set aside and the respondents are hereby directed to return the aforesaid cheques to the petitioners, forthwith. As the adjudication proceedings are already initiated, the same may be concluded in accordance with law and on merits. It will also be open for the respondents to pass provisional assessment order, if permissible under the law. The amount of Rs. 10 lacs deposited by the petitioners pursuant to the interim order passed by this court, the registry is directed to return the same to the petitioners by way of A/c payee cheque, without prejudice to the rights of the Department of the final assessment and/or provisional assessment. Rule made absolute to the aforesaid extent. No costs.