(2015) 05 GUJ CK 0033

In the Gujarat High Court

Case No : Special Civil Application No. 3770 of 2015

Central Arecanut and Cocoa Marketing Processing Co-Operative Ltd. (CAMPCO LTD) — APPELLANT

Vs

State of Gujarat and Others — RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 05 GUJ CK 0033

Hon'ble Judges : M.R. Shah, J;S.H. Vora, J

Bench : Division Bench

Advocate : Maulik N. Shah, for the Appellant; Chintan Dave, Asstt. Government Pleader, Advocates for the Respondent

Judgement

M.R. Shah, J.

1. By way of this petition under Article 226 of the Constitution of India, the petitioner - original owner of the goods seized has prayed for an appropriate writ, direction, order to quash and set aside the impugned memo of seizure issued on 28.12.2014 by the respondent No. 5 and consequently to release the goods lying in Truck No. RJ-14-1G-4047 on any reasonable condition as may think fit and proper.

2. Shri D.K. Puj, learned advocate appearing on behalf of the petitioner has stated at the Bar that the transaction between the petitioner and purchaser - M/s. Saloni Trading Company, Ahmedabad for which the invoice was issued by the petitioner on 25.12.2014 has been canceled and the petitioner is the absolute owner of the goods seized. He has stated at the Bar that the petitioner has not received any sale consideration from the said M/s. Saloni Trading Company. He has also stated at the Bar that as such the petitioner is ready and willing to pay the tax, interest and penalty imposable under the Gujarat Value Added Tax Act, 2003 (hereinafter referred to as "VAT Act") which according to the respondent comes to Rs. 5,69,989/-. He has stated at the Bar that the petitioner is ready

and willing to deposit the aforesaid amount unconditionally and accepts the liability to pay the aforesaid amount towards VAT Act with interest and penalty. He has stated at the Bar that authorized signatory of the petitioner - Shri Gangadhara P.M. S/o. Mahabalaiah, who is also the Regional Manager of the petitioner company has filed the undertaking to the aforesaid extent in which it is stated that the petitioner company is ready and willing to deposit amount of Rs. 5,69,989/- unconditionally being the amount of tax, penalty and interest under the VAT Act. Therefore, he has requested that on payment of the aforesaid amount, the goods seized worth approximately Rs. 44 lacs may be directed to be released.

3. Shri Chintan Dave, learned AGP appearing on behalf of the respondent No. 1 has initially tried to oppose the present Special Civil Application and requested to dismiss the Special Civil Application on the ground of suppression of fact and/or considering the conduct on the part of the petitioner, however at the most the respondent may insist for payment of tax, penalty and interest leviable under the VAT Act and when the petitioner company has agreed to pay the said amount unconditionally, he has requested to pass appropriate order.

4. Heard learned advocates appearing for respective parties at length.

At the outset it is required to be noted that the goods of the petitioner has been seized which as such was sold in favour of M/s. Saloni Trading Company, however for non-compliance of the provisions of the VAT Act more particularly non-furnishing of the requisite documents, the goods in question have been seized. It cannot be disputed that even if for non-compliance of any of the provisions of the VAT Act and when the goods were brought into the State of Gujarat and it can be considered to be the local sale, in that case also, the liability under the VAT Act towards tax, interest and penalty would be Rs. 5,69,989/-. Now, when the petitioner who is the original owner of the goods is ready and willing to deposit the aforesaid amount towards tax, penalty and interest, which can be the maximum liability under the VAT Act and when the owner/proprietor of M/s. Saloni Trading Company in the form of affidavit has stated that he has not purchased any goods from the petitioner, meaning thereby M/s. Saloni Trading Company is not the owner of the goods in question, it will be just and proper to direct the respondents to release the goods which is under seizure on payment of the aforesaid amount of Rs. 5,69,989/- as no fruitful purpose would be served to continue the goods in question under seizure.

5. In view of the above and for the reasons stated above, present Special Civil Application succeeds in part. The respondents herein are hereby directed to release the goods seized vide memo of seizure dated 28.12.2014 on the petitioner depositing unconditionally a sum of Rs. 5,69,989/- which would be towards the tax, penalty and interest, which the petitioner has agreed to deposit unconditionally and even for which a separate undertaking has been filed and on further satisfying the appropriate authority with respect to ownership of the goods seized. It goes without saying that on complying with the aforesaid, goods

in question seized to be released forthwith. Rule is made absolute accordingly. Direct service is permitted.

