(2015) 04 GUJ CK 0109

In the Gujarat High Court

Case No : Special Civil Application No. 6732 of 2015

Ganesh Trading APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 04 GUJ CK 0109

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

Bench : Division Bench

Advocate : Bhargav Karia and Asso., for the Appellant; Chintan Dave, AGP, 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 has prayed for an appropriate writ, order or direction directing the respondents to release the goods in question which have been detained by the concerned respondents vide memo dated 02.03.2015 on any condition that may be imposed by this Court including the amount of tax (CST and VAT) and the interest, penalty etc., however, subject to the final assessment order and subject to the outcome of the appeal which has been filed by the petitioner against cancellation of the provisional registration which is pending before the first Appellate Authority.

2. In the affidavit-in-reply filed on behalf of the respondents, it is stated that the amount of Central Sales Tax and the Value Added Tax, total tax/amount due and payable would be Rs. 7,20,435/-. The calculation is mentioned in paragraph No. 5 of the reply which reads as under:-

Considering the amount of Central Sales Tax and the Value Added Tax the total tax due and payable is Rs. 7,20,435/- (Rs. 3,01,875/- + Rs. 4,18,560/-).

3. Shri Bhargav Karia, learned advocate appearing for the petitioner has stated

at the bar that against the order passed by the first Appellate Authority cancelling the provisional registration, the petitioner has already preferred the appeal before the first Appellate Authority. It is submitted that, therefore, any amount, which the petitioner shall deposit/pay with the Department, may be subject to final assessment order/provisional assessment order and subject to the outcome of the appeal against cancellation of the provisional registration which is pending before the first Appellate Authority and which shall be by way of interim arrangement= only to protect the interest of the Revenue and without prejudice to the rights and contentions of the petitioner-dealer before the Assessing Officer and/or appropriate authority.

4. Shri Bhargav Karia, learned advocate appearing on behalf of the petitioner has stated at the bar that the petitioner is ready and willing to deposit and/or produce the necessary Challans of payment of the aforesaid amount before the respondent No. 4 and/or appropriate authority. It is, therefore, requested that on deposit of the aforesaid amount, the respondent No. 4 may be directed to release the goods detained under memo dated 02.03.2015.

5. In view of the above and stand taken by the learned advocates appearing for the respective parties, more particularly, Shri Karia, learned advocate appearing on behalf of the petitioner, as recorded hereinabove, it is directed that on deposit of the aforesaid amount of Rs. 7,20,435/- with the appropriate authority/bank and on production of the Challans with respect to payment of the aforesaid amount before the appropriate authority, the respondent No. 4 is hereby directed to release the goods in question detained under memo dated 02.03.2015 forthwith. However, it is observed and it is directed that the aforesaid deposit/ payment of Rs. 7,20,435/- shall be without prejudice to the rights and contentions of the respective parties, more particularly, the petitioner herein either before the Assessing officer and/or even before the first Appellate Authority before whom, the appeal is pending against the order of cancellation of the provisional registration and subject to the ultimate outcome of the provisional assessment/final assessment and also subject to the ultimate outcome of the appeal pending before the first Appellate Authority against the order of cancellation of the provisional registration.

6. With this, the present petition is disposed of. Direct service is permitted.

