

(2020) 01 GUJ CK 0040
In the Gujarat High Court

Case No : R/Special Civil Application No. 14008 Of 2019

MESSRS Meghmani Organics LTD

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Central Goods And Services Tax Act, 2017 — Section 7, 9, 129(3), 129(4)

Citation : (2020) 01 GUJ CK 0040

Hon'ble Judges : J.B.Pardiwala, J; Bhargav D. Karia, J

Bench : Division Bench

Advocate : Amal Paresh Dave, Paresh M Dave, Soaham Joshi

Final Decision : Disposed Of

Judgement

J.B.Pardiwala, J

1. Rule returnable forthwith. Mr. Soaham Joshi, learned Assistant Government Pleader waives service of notice of rule for and on behalf of respondents.

2. By this writ application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following relief(s):-

"18(A) That Your Lordships may be pleased to issue a writ of prohibition or any other appropriate writ, direction or order, completely and permanently prohibiting the respondents, their servants and agents from taking any action against the petitioners pursuant to Order Reference No. ZA2407190000680 dated 02.07.2019 (Annexure-G) and also Notice in Form GST MOV-07 dated 23.06.2019 (Annexure-E);

(B) That Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, direction or order, quashing and setting aside Order Reference No. ZA2407190000680 dated 02.07.2019 (Annexure-G) passed by the 2nd respondent herein with all consequential reliefs and benefits to the

petitioner;

(C) That Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction thereby holding and declaring that there was no illegality in stock transferring a consignment of CPC Blue vide stock transfer challan and Part-A of E- way bill (Annexure-B) from one branch of the petitioner to another, and directing the respondent no.2 herein to return Rs.9,25,200/- deposited by the petitioner on dated 24.06.2019 in the present case.

(D) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to restrain the respondents, their servants and agents from taking any action of coercive recovery against the petitioner pursuant to Order Reference No.ZA2407190000680 dated 02.07.2019 (Annexure-G) staying the implementation of this order.

(E) Any ex-parte ad-interim relief in terms of para 18(D) above may kindly be granted.

(F) Any other further relief that may be deemed fit in the facts and circumstances of the case may also please be granted."

3. The facts giving rise to this writ application may be summarized as under:-

3.1 The writ applicant is a Company engaged in the business of manufacture of chemical products. On 23.06.2019, a consignment of CPC Blue valued at Rs.25,70,000/- (Twenty Five Lac Seventy Thousand) was being transported from the factory of applicant situated at Panoli to one another factory of the writ applicant located at Vatva, Ahmedabad. It is the case of the writ applicant that this being an intra state branch transfer (in the nature of transfer of goods from one Unit of a registered person to another), there was no obligation on the writ applicant to discharge any GST liability. However, it seems that while the goods were in transit, the mobile squad of the respondent detained the conveyance along with the goods on 23.06.2019 and detention order was issued in the form GST MOV-06 dated 23.06.2019 on the ground that Part-B of the e- way bill was not generated.

3.2 It is not in dispute that the writ applicant immediately deposited an amount of Rs.9,25,200/- with the respondent no.2 herein. On deposit of such amount, the goods and the conveyance were released. On the very same day and date i.e. 23.06.2019, a notice under Section 129(3) of the Act in Form GST MOV-07 was served upon the writ-applicant calling upon the writ-applicant to show-cause as to why the applicable tax and also penalty equal to 100% of the tax payable should not be recovered.

3.3 It is pertinent to note that the writ-applicant was directed to appear before the 2nd respondent on 08.07.2019 at 11.00 am. It appears that in response to the show-cause notice, the writ applicant filed a detailed reply in writing dated 05.07.2019. The reply in writing dated 05.07.2019 came to be tendered before

the 2nd respondent on the date of hearing i.e. 08.07.2019. The principal argument of the writ- applicant in the case on hand is that, as it was the case of branch transfer, not involving any GST liability, there would not be any "supply" as contemplated under Section 7 of the CGST Act, and therefore, there cannot be any levy of GST under Section 9 of the said Act for such branch transfer.

3.4 It appears that without giving any opportunity of personal hearing, which was scheduled on 08.07.2019, the 2nd respondent proceeded to pass an order dated 02.07.2019 confirming imposition of tax and penalty.

4. Being dissatisfied with such action on the part of the respondents, the writ-applicant is here before this Court with the present writ-application.

5. Having heard the learned Counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the impugned order in Form GST MOV-07 dated 02.07.2019 is sustainable in law?

6. The facts of this case are plain and simple. This is a case of gross violation of the principles of natural justice. When the writ-applicant was asked to remain present on 08.07.2019 for the purpose of personal hearing, we fail to understand how the adjudication could have been concluded and an order could have been passed on 02.07.2019 i.e. before the scheduled date of hearing. This is suggestive of the fact that the reply of the writ-applicant in writing dated 08.07.2019 was also not taken into consideration.

7. To meet with the aforementioned situation, Mr. Soham Joshi, the learned Assistant Government Pleader for the respondents tried to offer an explanation. According to the learned AGP, as the entire amount came to be deposited on the very first day i.e. the day and date of seizure then there was no question, thereafter, to give any opportunity of hearing to the writ-applicant.

8. We are afraid, it is not possible for us to accept such explanation. The date on which the goods and conveyance was seized, the respondent no.2 asked the writ-applicant to deposit a particular amount towards the tax and penalty so that the goods and conveyance can be released. As the writ-applicant wanted the goods and conveyance to be released, he deposited the requisite amount. Later on, a show- cause notice came to be issued in the Form GST MOV-07 dated 23.06.2019. It was in the form of Notice under Section 129(3) of the Act, 2017. In the said show- cause notice, the applicable penalty along with the applicable tax has been stated and the writ-applicant was called upon to show cause as to why the said amount should not be recovered from him, failing which, the goods and the conveyance would be liable to be confiscated. The writ-applicant filed his detailed reply dated 05.07.2019 pointing out many relevant aspects of the matter including the fact that the seizure and detention itself was not justified.

9. We are not going into the issue whether the seizure and detention of the goods along with conveyance was justifiable or not. We are only concerned with

the manner in which the respondent no.2 has proceeded to pass the final order under Section 129(3) of the Act. There is no doubt in our mind that the writ-applicant was not given any opportunity of hearing before concluding the proceedings for the purpose of Section 129(3) of the Act. To put it in another words, the case on hand is one of violation of sub-clause 4 of Section 129 of the Act, 2017. It provides that no tax, interest or penalty shall be determined under sub-section 3 without giving a person concerned an opportunity of being heard. The opportunity which the statute is talking about has to be meaningful opportunity and not just an eye wash.

10. In such circumstances referred to above, we are left with no other option, but to quash and set aside the impugned order dated 02.07.2019 determining the tax and penalty and remit the matter to the respondent no.2 for fresh consideration of the entire issue after giving appropriate opportunity of hearing to the writ-applicant.

11. In the result, this writ-application succeeds and is hereby allowed. The impugned order being Reference No.ZA2407190000680 dated 02.07.2019 (Annexure-G) is hereby quashed and set aside. The matter is remitted to the respondent no.2 for the purpose of giving an opportunity of hearing to the writ-applicant in accordance with law. The respondent no.2 shall issue a fresh notice for the purpose of hearing to the writ-applicant and upon receipt of such notice, the writ-applicant shall appear before the respondent no.2 and make good his stance. The respondent no.2 shall after taking into consideration the reply of the writ-applicant and other contentions shall pass appropriate order in accordance with law at the earliest.

With the above directions, this writ-application stands disposed of. Rule is made absolute to the aforesaid extent. Direct service is permitted.