

**(2014) 03 GUJ CK 0108**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No. 4060 of 2014

Shree Associates

APPELLANT

Vs

State of Gujarat

RESPONDENT

**Date of Decision :** 24-03-2014

**Acts Referred:**

Gujarat Value Added Tax Act, 2003 — Section 44

**Citation :** (2014) 45 GST 241 : (2014) 73 VST 281

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

**Bench :** Division Bench

**Advocate :** Siraj R. Gori, Advocate for the Appellant; Jaimin Gandhi, Advocate for the Respondent

## **Judgement**

Akil Abdul Hamid Kureshi, J.—Petitioner has challenged an order dated 11/02/2014 passed by Commercial Tax Officer, Vadodara, the respondent No. 3 herein by which, the bank accounts of the petitioner have been frozen. The petitioner is a partnership firm engaged in the business of construction and sale of residential flats. Since last about four years, the petitioner is engaged in development of a landed property at Chhani in Vadodara, where, several residential units, in as many as 36 towers, are being constructed. Undisputedly, the petitioner is accessible under the Gujarat Value Added Tax Act, 2003 (for brevity "the said Act"). Undisputedly, the petitioner has not filed returns for assessment under the said Act. In exercise of powers u/s 44 of the said Act, the respondent No. 3, therefore, ordered provisional attachment of the bank accounts of the petitioner for protecting the interest of the Government revenue. Section 44 of the said Act pertains to provisional attachment. Sub-section (1) of Section 44 empowers the competent authority during the pendency of any proceedings of assessment or reassessment of turnover escaping assessment to order in writing, attach provisionally any property belonging to a dealer, if he is of the opinion that for the purpose of protecting the interest of Government revenue, it is necessary so to do. Though the power, therefore, undoubtedly vests in the Commissioner to pass order of provisional attachment, such

measures being in the manner of attachment before judgment and therefore, of extraordinary character, must be resorted to reasonably and sparingly. In that context, we have collected information from both sides. What emerges from the record is that, there is admitted liability of approximately of Rs. 50 lakhs of tax by the petitioner. Admittedly, no Returns are filed nor such tax is paid. At least, such amount, the petitioner must deposit with the authorities immediately only then the petitioner can seek any discretionary relief from the Court.

2. The rest of the issues are in the realm of disputes between the parties. The prime dispute pertains to the cost of the land to be deducted from the turnover of sale to arrive at the taxable turnover of the petitioner. The revenue has in its calculations deducted a sum of Rs. 2.14 crores (rounded off), the actual sale consideration paid by the petitioner for purchase of land. The petitioner, however, contends that the land price component of the total sale value of the flats comes to Rs. 17.68 crores (rounded off). We may not be able to resolve such disputes in this petition. However, what further emerges from the record is that the respondents have also attached as many as 33 flats, which the counsel for the petitioner stated on instructions, are fully constructed. He further stated that such flats are neither sold, nor assigned or booked by any customer. Such properties are also otherwise free from any encumbrance. No bank loan or any other borrowing is made against such flats. In other words, these flats have a clear marketable title, which vests in the petitioner. 17 of these flats have constructed area of 575 sq. mtrs, 16 of these flats have constructed area of 790 sq. mtrs. If we adopt an average price of these flats at Rs. 12 lakhs each, the total value of such flats comes of Rs. 3.96 crores (to be rounded off to Rs. 4 crores). According to the respondents, possible tax and penalty liability could be Rs. 4.58 crores. Considering the facts and circumstances, the attachment of the petitioner's bank accounts shall be lifted subject to following conditions:

(i) The petitioner files an undertaking before this Court that 33 flats mentioned above are fully constructed, are not sold, assigned or booked in favour of any one, are free from any encumbrance and have fully clear and marketable title vesting in the petitioner.

(ii) The petitioner shall also undertake that such flats shall not be sold, transferred or assigned nor any charge shall be created till the assessment by the respondents is completed.

(iii) The undertaking shall also include the declaration that a sum of Rs. 50 lakhs will be deposited with the Government authority latest by 25th April 2014.

(iv) Such undertaking shall be filed by one of the partners of the petitioner latest by 28th March 2014.

(v) The petitioner shall deposit a sum of Rs. 50 lakhs towards possible tax and penalty liability by 25th April 2014.

(vi) The petitioner shall also give bank guarantee of Rs. 25 lakhs to the

respondents which shall be initially for a period of one year and shall be renewed from time to time till the assessments are over.

2.1. The respondents are expected to complete the assessment expeditiously.

2.2. It is clarified that the bank accounts of the petitioner shall be released as soon as the undertaking, as provided in para (i) of the conditions is filed before this Court, with a copy to respondent No. 3.

2.3. The petition is disposed of accordingly. Direct service is permitted.