

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 8900 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.J.DESAI
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

KAPIL HUKMICHAND KOTHARI
 Versus
 UNION OF INDIA

Appearance:

MR TUSHAR HEMANI, SR ADV. WITH MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1

MR TRUPESH KATHIRIYA, AGP for the Respondent(s) No. 2 TO 4
 DS AFF.NOT FILED (N) for the Respondent(s) No. 1,2,3

CORAM: HONOURABLE MR. JUSTICE A.J.DESAI
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 07/06/2022
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.J.DESAI)

1. Draft amendment is allowed. To be carried out forthwith.

2.Rule. Learned Assistant Government Pleader Mr. Trupesh Kathiriya waives service of notice of rule on behalf of the respondent Nos. 2 to 4.

3.With the consent of the learned advocates for the parties, the matter is taken up for final disposal.

4.By way of present petition under Articles 226 and 19(1)(g) of the Constitution of India, the petitioner has prayed as under:

"a) to quash and set aside the Order of Detention under Section 129(1) of the CGST Act in Form GST MOV-06 dated 28/04/2022 (Annexure - "A*)passed by the Respondent No. 4;

(aa) That Your Lordships may be pleased to issue a Writ, direction, or order, under Article 226 of the Constitution of India, quashing and setting aside the impugned FORM MOV-10 issued by Respondent no. 4 on 06.05.2022 (Annexure - J) and declared as non-maintainable being passed without jurisdiction;

(b) to hold the Order of Detention dated 28/04/2022passed by the Respondent No. 4under Section 129(1) of the CGST Act in Form GST MOV-06 at Annexure - "A"as non-

maintainable as the same
being passed without jurisdiction;

(c) Pending the admission, hearing and final disposal of this petition, to stay the implementation and operation of the Order of detention under Section 129(1) of the CGST Act in Form GST MOV-06 dated 28/04/2022 at Annexure - "A" to this petition;

(cc) That Your Lordships may be pleased to issue a Writ of Prohibition or any other appropriate writ, direction, or order, completely and permanently prohibiting Respondent no. 4 from proceeding further pursuant to MOV-10 (Annexure -J).

(d) direct the Respondent No. 3 to release the Goods worth Rs.1,08,60,957 /- of the Petitioner without payment of penalty;

(e) direct the Respondent No. 3 to release the Goods worth Rs.1,08,60,957 /- of the Petitioner along with the Conveyance without payment of penalty;

(ee) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to direct or order Respondent No. 4 not to proceed further pursuant to the notice in FORM MOV-10 (Annexure -J).

(f) any other and further relief deemed just and proper be granted in the interest of justice;

(g) to provide for the cost of this petition."

5. In response to the notice issued by this Court, the respondent Nos. 2 to 4 have appeared through learned Assistant Government Pleader and filed affidavit-in-reply dated 18.05.2022.

6. Short facts put-forth by the petitioner is as under:

6.1 The petitioner is engaged in the business of trading of copper and copper scrap and is registered under the provisions of the Central Goods and Service Tax Act, 2017 [herein after to be referred to as 'the CGST Act'] having its registration number GSTIN 24AEBPK5633A1Z5. It is the case of the petitioner that the petitioner is filing returns regularly under the CGST Act.

6.2 It is the case of the petitioner that one Sahajanand Chem Industries, Gandhinagar had placed an order for copper scrap [hereinafter to be referred to as 'the goods'] with the petitioner amounting to

Rs. 1,08,60,957/-. The said goods were being transported from Surat (Gujarat) on 25.04.2022 in conveyance bearing number DD-01-E-9523 which was to be delivered at Gandhinagar (Gujarat). The E-way bill generated was valid for the period from 25.04.2022 to 27.04.2022.

6.3 When the goods were being transported to Gandhinagar on 26.04.2022, respondent No.4 intercepted the said conveyance at Adalaj at 8:45 a.m. and carried out inspection of the goods in question and asked for the necessary documents from the driver. The documents prescribed under the Act like invoice, E-way Bill and Lorry receipts were produced by the driver of the conveyance to the officer. However, the goods were detained by the authority. After following procedure under the law as well as under the circular No. 41/15/2018-GST issued by the Ministry of Finance, Government of India dated 13.09.2018, GST MOV-06 was issued to the petitioner. The reasons for detaining the goods were reflected in the said form.

6.4 Though the goods in transit were being transported in accordance with the Act and though the driver had produced relevant

documents before the authority which were in accordance with the Act and the Rules, the goods were detained and therefore a representation was made before the Authority but the goods were not released by the authority. Being aggrieved with the action of the respondent-authorities, present petition has been filed.

7. After filing of the petition, by way of draft amendment, learned advocate has produced several documents including a notice issued by respondent Nos. 2 to 4 under Form GST MOV-10 exercising powers under section 130 of the CGST Act and therefore accordingly amendment as carried out.

8. Learned Senior Advocate Mr. Tushar Hemani for learned advocate Ms. Vaibhavi Parikh for the petitioner has taken us through MOV-06 issued while detaining the goods to submit that the authority has exercised its powers having not vested in it under section 129 of the Act in view of the fact that the authority has relied upon some transactions which have taken place between the petitioner and with regard to some other party in the years 2017-18, 2018-19, 2019-20, 2020-21 for which, no

notices had ever been issued by the authority.

9. It was submitted that under section 129 of the CGST Act, the authority can detain only those goods and/or conveyance which is used in transit in contravention of the provisions of the Act or Rules made thereunder is found. However, in the present case, no contravention of any provision of the Act and Rules for good in transit were found as recorded by the authority while issuing MOV-06 on 26.04.2022. In support of his submissions he has relied upon the reported decision of this Court in case of **Majid Bilalbhai Akbani Proprietor of M/S Imran Impex versus State of Gujarat and others** decided in Special Civil Application No. 12754 of 2020 on 06.11.2020 to submit that this Court has released the goods on certain terms and conditions since during the pendency of section 129 proceedings, the authority has already issued show-cause notice in Form MOV-10 under section 130 of the act. He has, under instructions, submitted that the petitioner is, subject to his rights and contentions which may be raised before the authority in the adjudication proceedings under section 130 of

the Act, ready and willing to deposit an amount of Rs. 17 lacs which has been tentatively determined by the authority as penalty amount which is reflected in show-cause notice in Form MOV-10 dated 26.04.2022. He has further submitted that subject to rights and contentions which may be raised in the adjudication proceedings, the petitioner is also ready and willing to issue bond to the tune of Rs. 65 lacs which is reflected in the MOV-10 under the head of "The determination of fine in lieu of confiscation of goods as well as calculation of fine in lieu of confiscation of conveyance". He therefore submitted that appropriate order may be passed.

10. On the other hand, learned AGP has opposed this petition and submitted that the authority is in the midst of hearing the proceedings under section 130 of the Act and can decide the same at the earliest. He therefore submitted that goods may not be released at this stage. He has taken us through the affidavit-in-reply and submitted that certain transactions which have been reflected in MOV-06 and MOV-10 are of such nature which create doubts about the validity of such transactions which might have taken

place in the year 2017-18 and onward. He therefore submitted that the petition may be dismissed.

11. We have heard learned advocates for the respective parties. It is not in dispute that when the conveyance was intercepted along with the goods, the driver of the conveyance did produce necessary documents which are required under the Act as well as the Rules like invoice, E-way bill, Lorry receipts. After following the procedure, when MOV-06 was issued, following reasons were assigned by the authority for exercising its powers under section 129 of the Act. The same reads as under:

Discrepancies noticed after physical verification of goods and conveyance
Mismatch between goods in movement and documents tendered, the details of which are as under:-a)..... b)..... c).....
Mismatch between E-Way bill and goods in movement, the details of which are as under:a)..... b)..... c).....
Goods not covered by valid documents, and the details of which are as under- a) Invoice/E-Way Bill Not Tendered with Some Of Goods
Others 1) Dealer M/s, SHREE DHANLAXMI METAL

INDUSTRIES (GSTN 24AEBPK5633A1Z5) engage in the business of copper scrap and copper wire. On the verification following discrepancies found:

In the year 2017-18 M/s, SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPK5633A1Z5) utilised input tax credit of Rs. 49,57,688/- from the different dealers whose GSTN cancelled suo moto and Rs. 12,50,926/- from the different dealers whose GSTN suspended. (List of dealers attached)

In the 2018-19 M/s, SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPKS633A1ZS) utilised input tax credit of Rs. 1,71,54,717/- from the different dealers whose GSTN cancelled suo moto and Rs. 93,25,767/- from the different dealers whose GSTN suspended. (List of dealers attached)

In the year 2019-20 M/s, SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPKS633A125) utilised input tax credit of Rs. 2,21,12,516/- from the different dealers whose GSTN cancelled suo moto, (List of dealers attached)

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In the year 2020-21 M/s. SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPKS633A125) utilised input tax credit of Rs. 2,74,32,425/- from the different dealers whose GSTN cancelled suo moto and Rs. 12,01,13,679/- from the different dealers whose GSTN suspended. (List of dealers attached)

- In the year 2021-22 M/s. SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPKS633A1Z5) utilised input tax credit of Rs. 23,76,78,100/- from the different dealers whose GSTN cancelled suo moto and Rs. 5,44,57,577/- from the different dealers whose GSTN suspended, (List of dealers attached)

- In short, from the period 01/07/2017 to 31/03/2022 M/s. SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPK5633A1Z5) utilised input tax credit of Rs. 30,93,35,445/- from the different dealers whose GSTN cancelled suo moto and Rs. 18,51,47,979/- from the different dealers whose GSTN suspended.

- Recently, In the month of April-2022 M/s. SHREE GHANLAXMI METAL INDUSTRIES (GSTN 24AEBPK5633A1Z5) purchased copper scrap from M/s Akshar traders (GSTN 24BRRPB3664A1Z3), While M/s Akshar traders (GSTN 24BRRPB3664A1Z3) made purchase from (1) M/s RATHOD ENTERPRISE (24EWQPR1711H1Z0), (2) M/s. SHEETAL TRADING (24CEWPT9122A129).

(1) M/s RATHOD ENTERPRISE (24EWQPR1711H1Z0) has not made any purchase eventhough M/s RATHOD ENTERPRISE (24EWQPR1711H1ZD) issue different invoices to M/s Akshar traders ({GSTN 24BRRPB3664A1Z3) and M/s Akshar traders (GSTN 24BRRPB3664A 1Z3) issue invoices to M/s. SHREE DRANLAXMI METAL INDUSTRIES (GSTN 24AEBPKS633A125).

(2) M/s. SHEETAL TRADING (24CEWPT9122A129) has not made any purchase eventhough M/s 9 Sheetal Trading (24CEWPT9122A129) issue different invoices to M/s Akshar traders (GSTN 24BRRPB3664A1Z3) and M/s Akshar traders (GSTN 24BRRPB3664A5Z3) issue invoices to M/s. SHREE DHANLAXMI METAL

INDUSTRIES (GSTN 24AEBPK5633A125) .So, It shows that M/s, SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPK5633A125) has utilized "input tax credit wrongly availed or utilised by reason of fraud"

- M/s. SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPK5633A125) purchased copper scrap from M/s Maruti Corporation (GSTN 24DMJPR7385K1Z8), While M/s Maruti Corporation (GSTN 24DMJPR7385K1Z8) made purchase from M/s PRATIMA ENTERPRISE (24CKRPG7913D1Z5) .

M/s PRATIMA ENTERPRISE (24CKRPG7913D1Z5) has not made any purchase even though M/s PRATIMA ENTERPRISE (24CKRPG7913D1Z5) issued different invoices to M/s Maruti Corporation (GSTN 24DMJPR7385K1Z8) and M/s Maruti Corporation (GSTN 24DMJPR7385K1Z8) Issue different invoices to M/s. SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPK5633A125). SO, It shows that M/s, SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPK5633A125) has utilized "input tax credit wrongly availed or utilised by reason of fraud".

- M/s, SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPK5633A125) purchased copper scrap from M/s Arrox max (GSTN 24ABLPZ8879N1Z9), While M/s Arrox max (GSTN 24ABLPZ8879N1Z9) made purchase from M/s RIDDHI ENTERPRISE (24BDWPV6534N1ZH) And M/s SHIVRAINI TRADERS (24GWVPK7303F222). M/s RIDDHI ENTERPRISE (24BDWPV6534N1ZH) cancelled suo moto And M/s SHIVRAINI TRADERS (24GWVPK7303F222) cancelled suo moto M/s RIDDHI ENTERPRISE (24BDWPV6534N1ZH) And M/s SHIVRAINI TRADERS (24GWVPK7303F222) sue invoices to M/s Arrox max (GSTN 24ABLPZ8879N1Z9) and M/s Arrox max (GSTN 24

ABLPZ8879N1Z9) issue invoices to M/s, SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEBPK5S633A2Z5), So, It shows that M/s, SHREE DHANLAXMI METAL INDUSTRIES (GSTN 24AEGPK5633A125) has utilized

"input tax credit wrongly availed or utilised by reason of fraud",

12. Similar are the reasons referred in Form GST MOV-10 received by the petitioner on 06.05.2022 issued by the authority. Considering the above aspects and keeping in mind the ratio laid down by the Division Bench of this Court in case of Majid Bilalbhai Akbani Proprietor of M/S Imran Impex versus State of Gujarat (supra) as well as the statement of learned counsel for the petitioner, we would like to dispose of the petition without going into the merits of the case by issuing following directions:

On depositing an the amount of Rs. 17 lacs and furnishing the bond of Rs. 65 lacs with the respondent-Authority, without prejudice to the rights and contentions to be raised before the adjudicating authority in the pending proceedings by the petitioner, the respondent-authority shall release the vehicle and goods in question. The inquiry

with respect to Form GST MOV-10 shall proceed further in accordance with law.

13. With the above observation, the petition is partly allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.J.DESAI, J)

(BHARGAV D. KARIA, J)

JYOTI V. JANI

