

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14829 of 2022**

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M/S SHIVANJALI FASHIONS
Versus
UNION OF INDIA

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Appearance:

MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2,3,4,5

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CORAM: **HONOURABLE MR. JUSTICE N.V.ANJARIA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 03/08/2022

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Heard learned advocate Mr.Avinash Poddar for the petitioner.

2. By first prayer in this petition the petitioner has prayed to declare the 2nd proviso to Section 16(2) of the CGST Act, 2017 as ultra vires and *dehors* the provisions of the India Contract Act, 1872 Act and also in violative of Articles, 14, 19(1)(g) and 300A of the Constitution.

3. In respect of the aforesaid prayer challenging the vires of the provision, there shall be Rule.

4. The other prayers in the petition reads as under,

“(i) Issue appropriate writ/order/direction to quash and set aside the demand cum show cause notices dated 13.06.2022 issued by respondent

no.04 & 05.

(ii) Issue appropriate writ/order/direction directing the respondents to refund the amount of Rs.4,51,346/- paid vide DRC-03 dated 24.03.2022 along with interest @9% p.a.

(iii) Issue appropriate writ/order/direction directing the respondent, as an ad-interim relief, to stay proceedings initiated vide demand cum show cause notices and to not take any coercive action against the petitioner till the final disposal of this petition."

5. The bare reading of the above prayer indicates that the petitioner has challenged show cause notice dated 13.6.2022 issued by the fourth and fifth respondents which is in the nature of intimation of tax payable under Section 73(5) / 74(5) of the Act read with Rule 142(1A).

6. There is no gain saying that by said show cause notice, the authorities have initiated the adjudicatory proceedings to ascertain the tax liability of the petitioner.

7. It is trite that the court in exercise of its writ jurisdiction, would be disinclined to set aside, much less to stay the show cause notice, more particularly when the impugned show cause notice are adjudication bound.

8. It will be open for the petitioner to raise all contentions in respect of the show cause notice. It is clarified, while issuing rule as above in respect of the first prayer, that the authority shall proceed with the adjudication proceedings pursuant to the show cause notice.

9. It is also clarified that the challenge to the vires of the

aforesaid provisions in the nature of second provisio to Section 16(2) of the Act and the rule issued in this matter, shall neither be a ground for the petitioner to be raised to oppose the show cause notice and the adjudication proceedings, nor shall be an aspect to weigh with the authorities in the proceedings with the merits.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

Manshi