

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7905 of 2020**

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HASIMKHAN LIYAKATKHAN PATHAN
Versus
STATE OF GUJARAT

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Appearance:

MR VARIS V ISANI(3858) for the Petitioner(s) No. 1

MR DHARMESH M DEVNANI, AGP for the Respondent(s) No. 1,2

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 14/07/2020**ORAL ORDER****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ application under Article 226 of the Constitution of India, the writ applicant, a Proprietor of a Proprietary concern engaged in the business of iron and scrap, has prayed for the following reliefs:

“[A] The Hon’ble Court may be pleased to issue a writ of mandamus or a writ in nature of mandamus or any other appropriate writ or order directing the learned Respondent authorities to quash and set aside the order passed u/s. 74 in FORM GST DRC-07 on 22.05.2020 during lock-down period, without following the due process of assessment and adjudication under Section 73/74 of the GST Acts of alleged evasion of tax liability under the GST Acts. The action of the respondent authority is blatant violation of principle of natural justice.

[B] Pending notice, admission and final hearing of this Petition, this Hon’ble Court may be pleased to restrain

the learned respondent authorities from taking action any recovery action against the Petitioner under GST Acts.

[C] The Hon'ble Court may be pleased to issue direction to the State and Central GST Authorities for not to take any coercive action of recovery without providing proper opportunity of being heard to the petitioner and without verifying the documents and evidences of the petitioner and without verifying the various provisions of the GST Act. A further direction may please be given to that any one authority can continue the proceedings as per provision of section 5 & 6 of the CGST Act. It is further prayed that input tax credit u/s. 16 may please be allowed on the genuine purchasers made by the petitioner from the registered dealer.

[D] Ex parte ad interim relief in terms of prayer B may kindly be granted.

[E] Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioner shall forever pray."

2. We need not delve much into the facts of this case as this writ application can be allowed on a short ground.

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3. The subject matter of challenge is the impugned order dated 22.05.2020 passed by the authority under Section 74 of the Goods and Service Tax Act, 2017. The grievance of the writ applicant is that the impugned order dated 22.05.2020 came to be passed without giving any opportunity of hearing to the writ applicant. It is pointed

out that the impugned order came to be passed during the period of complete lock-down.

4. In such circumstances, the learned counsel appearing for the writ applicant prays that the impugned order may be quashed and set aside and the matter may be remitted to the concerned authority so as to give an opportunity of hearing to the writ applicant.

5 This writ application was listed yesterday for hearing. Having regard to the peculiar facts of this case, we requested Mr. Devnani, learned Assistant Government Pleader, to take appropriate instructions as to whether the concerned authority would be willing to recall the order and pass a fresh order after giving an opportunity of hearing to the writ applicant. We accordingly ordered that the matter be notified today to enable Mr. Devnani to take appropriate instructions. Today, when the matter is taken up for further hearing, Mr. Devnani, learned Assistant Government Pleader, places on record a communication in writing addressed by the Department dated 13.07.2020 to the office of the Government Pleader. The same is ordered to be taken on record.

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6. The Department has agreed to give an opportunity of hearing to the writ applicant and thereafter pass an appropriate fresh order.

7. In view of the above, the impugned order dated 22.05.2020 is hereby quashed and set aside.

8. The matter is remitted to the respondent No.2 for giving an opportunity of hearing to the writ applicant and thereafter pass appropriate order in accordance with law. Mr. Isani, the learned counsel appearing for the writ applicant, makes a request that having regard to the current scenario his client may be given eight weeks time to appear before the respondent No.2. The respondent No.2 shall issue a notice after eight weeks from today intimating the date of hearing to the writ applicant and upon receipt of such intimation, the writ applicant shall appear before the authority concerned and make good his submissions. The respondent No.2 shall thereafter pass an appropriate order in accordance with law.

9. In view of the above, this writ application is allowed.

10. We clarify that we have otherwise not gone into the merits of the matter.

THE HIGH COURT
OF GUJARAT

(VIKRAM NATH, CJ)

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DRASHTI K. SHUKLA

(J. B. PARDIWALA, J)