

2019-TIOL-1032-HC-AHM-GST

IN THE HIGH COURT OF GUJARAT

AT AHMEDABAD

R/Special Civil Application No. 5378 Of 2019

M/s BHARAT VIJAY TRANSPORT COMPANY

Vs

STATE OF GUJARAT

Harsha Devani & Bhargav D Karia, JJ

Dated: May 03, 2019

Appellant Rep by: Mr Varis V Isani (3858)

Respondent Rep by: Mr Soaham Joshi, Asst. Govt. Pleader /pp(99)

GST - In case of two lorry receipts issued to M/s Standard Sales Corporation, the owner of the goods has not turned up for getting the goods released - Upon inquiry it is found that the GSTN stated in the e-way bill etc. have been obtained on the basis of the Aadhar card, PAN and mobile number of one Mahendrabhai Venilal Solanki who had permitted one Vipulbhai to use such documents for obtaining GST registration upon payment of some amount to him - However, though the statement of Mahendrabhai has been recorded in January, 2019 no criminal proceedings have been instituted against him nor has any complaint been filed before the police in respect of such offence - order of confiscation made under section 130 of the Goods and Services Tax Act, 2017.

Held:

It appears that such GSTN has been given without proper inquiry as contemplated under the Act and the rules, which is on account of default on the part of the concerned authorities - However, it appears that instead of tracing out the real culprit, the respondents are seeking the easy way out by penalising the transporter who *prima facie*

does not appear to have doubted the person who engaged it for transport of the goods as an invoice and e-way bill were produced by him, and recovering the tax, penalty and fine from him - It is evident that the authority concerned has not applied its mind to the objections raised by the petitioner and has perfunctorily passed the impugned order confiscating the conveyance of the petitioner - petitioner has made out a strong prima facie case for grant of interim relief - respondents are directed to forthwith release the conveyance subject to the petitioner filing an undertaking as specified: HC [para 5]

Interim relief granted

JUDGEMENT

Per: Harsha Devani:

1. Heard Mr. Varis Isani, learned advocate for the petitioner and Mr. Soaham Joshi, learned Assistant Government Pleader for the respondents.

2. In this case when the conveyance in question was apprehended it was carrying goods under 31 bills and lorry receipts, out of which in case of 22 bill and lorry receipts the goods were released immediately; in case of nine defective bills and lorry receipts, seven of the concerned tax payers had paid the tax and penalty, pursuant to which the goods were released. It is in case of only two lorry receipts viz. No. 155609 and 155616 issued to M/s Standard Sales Corporation that the owner of the goods has not turned up for getting the goods released and upon

inquiry it is found that the GSTN stated in the e-way bill etc. have been obtained on the basis of the adhar card, PAN and mobile number of one Mahendrabhai Venilal Solanki who had permitted one Vipulbhai to use such documents for obtaining GST registration upon payment of some amount to him. However, though the statement of Mahendrabhai has been recorded in January, 2019 no criminal proceedings have been instituted against him nor has any complaint been filed before the police in respect of such offence. No steps have been taken against the said Mahendrabhai under section 122(xxii) of the [Central Goods and Services Tax Act, 2017](#)/Gujarat Goods and Services Tax Act, 2017.

3. Admittedly the goods were being transported under an invoice and e-way bill bearing a valid GSTN. It appears that such GSTN has been given without proper inquiry as contemplated under the Act and the rules, which is on account of default on the part of the concerned authorities. However, it appears that instead of tracing out the real culprit, the respondents are seeking the easy way out by penalising the transporter who prima facie does not appear to have doubted the person who engaged it for transport of the goods as an invoice and e-way bill were produced by him, and recovering the tax, penalty and fine from him.

4. On a perusal of the order of confiscation made under section 130 of the Goods and Services Tax Act, 2017 read with the relevant provisions of the State Goods and Services Tax Act/ integrated Goods and Services Tax Act, it is evident that the authority concerned has not applied its mind to the objections raised by the petitioner and has perfunctorily passed the impugned order confiscating the conveyance of the petitioner.

5. In the aforesaid premises the petitioner has made out a strong prima facie case for grant of interim relief. Under the circumstances, Issue Rule returnable on 19th June, 2019. By way of interim relief, the respondents are directed to forthwith release the conveyance being Truck No.GJ-01-BY-5326 of the petitioner, subject to a responsible partner of the petitioner firm filing an undertaking before this court, within a period of two days from today, that in the event the petitioner fails in the petition or is otherwise found to be liable under the CGST/GGST Act, the petitioner shall forthwith discharge such liability without prejudice to its rights to challenging such order before the appropriate forum.

Direct service is permitted.

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