Remark Flour Mills Pvt. Ltd. v. State of Gujarat

Collection of cheques, a second notice under Section 74(3) for the same period, and provisional attachment of bank accounts.

Date of Order: April 19, 2018
Case Law No: GIB-GUJHC-2018-03
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

After a visit to the premises on 20.02.2018, the department collected three cheques of about Rs 19.75 lakh, which the assessee said were taken under threat. A show cause notice of 27.02.2018 for Rs 36.89 lakh was issued and the bank accounts were provisionally attached the same day. A second notice dated 19.03.2018 was issued under Section 74(3) for the same period. The assessee challenged all three actions.

Final Verdict

The Court held that **a notice under Section 74(3) can be issued only where a notice under Section 74(1) already exists for a different period, and cannot be used to enlarge the demand for the same period.** The second notice was set aside, leaving the department free only to consider it on jurisdiction, and the department was directed to return the three cheques. The provisional attachment was found unjustified, since no reasons were shown why such a drastic power was necessary.

The attachment was removed on condition that the assessee maintains stock worth at least Rs 50 lakh until the adjudication ends and gives an undertaking. All defences to the first notice were kept open.

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