NEUTRAL CITATION
2020:GUJHC:6604-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2705 of 2020

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ANOPSINH KIRITSINH SARVAIYA
Versus
STATE OF GUJARAT

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Appearance:
MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
for the Respondent(s) No. 2
MR. CHINTAN DAVE, ASST. GOVERNMENT PLEADER/PP(99) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 06/02/2020

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. Rule returnable forthwith. Mr. Chintan Dave, the learned AGP, waives service of notice of rule for and on behalf of the respondents.

2. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs;

> *"(A) quash and set aside the sealing memos at Annexure-A (Colly) in relation to the Godown No.14 situated at Makerting Yard, Gondal.*
>
> *(B) pending the admission, hearing and final disposal of this petition, stay the implementation and operation of the impugned sealing memos in relation to the Godown No.14 situated at Marketing Yard, Gondal at Annexure-A(Colly);*

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

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

3. The facts, giving rise to this writ application, may be summarized as under;

3.1 The writ applicant claims to be an agriculturist. It is his case that he owns a godown bearing No.14, situated at the Marketing Yard at Gondal, District: Rajkot. According to him, the said Godown No.14, situated at the Marketing Yard has been given on rent to five distinct entities, namely, (I) Ajayraj & Co. (ii) Dharamraj Exports (iii) Kamani Exports (iv) R.L. Enterprise and (5) Ruturaj & Co. It is the case of the writ applicant that this particular godown is used by the above referred entities for the purpose of storing agricultural produce like cotton bales and cotton yarn. According to him, the relationship is that of landlord and tenant.

3.2 On 17th November, 2018, the authorities under the CGST Act visited the godown, and in exercise of power under Section 67 of the Act, applied seal on the godown. The godown in question came to be sealed by the officials of the Department vide sealing memos dated 17th November, 2018 and 19th November, 2018 respectively. The sealing memo dated 17th November, 2018 reads thus;

"Office of the Deputy Commissioner of State Tax Enforcement, Div. I, Ahmedabad, Gujarat State, A-4, Rajya Kar Bhavan, Ashram Road, Ahmedabad, 380009.

Date:

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SEALING MEMO

M/s. Dharamraj Export
GSTN
24AAKFD 8036B12R
Date of Search: 17.11.2018 Time: 01:30 Hrs.

According to Central Goods and Services Tax Act, 2017 & Gujarat Goods and Services Tax Act, 2017 search activity has been conducted in the case above dealer / transporter but due to reason given below, it is decided to cessation the search activity for today.

Reasons:

Authorized person not present

Place: Gondal *Signature Name*
Date: 19.11.2018 *Designation*
Round Seal *Dealer Sign*

Note:

1. This seal is done in the presence of two witness and decided to open at time to next search proceeding.

2. Any attempt on the part of the tamper with the sealing memo, books of accounts is punishable with imprisonment and/or fine under the Act read with section 179, 191 and 4128 of the Indian Penal Code."

3.3 The sealing memo dated 19th November, 2018 reads thus;

"Office of the Additional State Tax Commissioner, B-4, State Tax Bhavan, Ashram Road, Gujarat State, Ahmedabad, 380009.

Date: 19.11.2018

SEALING MEMO

M/s. Kamani Export
GSTN
24AAPFR 2818MIZY

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Date of Search: 17.11.2018 Time; 1:30 PM
To 19.11.2018 Time: 5:30 PM

According to Central Goods and Services Tax Act, 2017 & Gujarat Goods and Services Tax Act, 2017 search activity has been conducted in the case above dealer/ transporter but due to reason given below, it is decided to cessation the search activity for today.

Reasons:

1. To avail Wrong ITC

2. Collected tax wrongly & not deposited to Govt. Treasury

3. Try to neglect searching team

4.Non-Co-operation in search process.

Place: Gondal *Signature Name*
Date: 19.11.2018 *Designation*
Round Seal *Dealer Sign*

Note:

2. This seal is done in the presence of two witness and decided to open at time to next search proceeding.

2. Any attempt on the part of the tamper with the sealing memo, books of accounts is punishable with imprisonment and/or fine under the Act read with section 179, 191 and 4128 of the Indian Penal Code."

3.4 It is the case of the writ applicant that if the five dealers, referred to above, have contravened any of the provisions of the Act or the Rules, then it is always open for the authorities to proceed against them in accordance with law. However, the grievance of the writ applicant is that he, being the owner of the godown, the seal which has been affixed, cannot be for an indefinite period of time. According to the

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writ applicant, if the five dealers, referred to above, have stored anything in the godown in the form of goods or other documents, then they may be liable to confiscation, but being the owner of the godown, he has nothing to do with the alleged contravention of the provisions of the Act or the Rules.

3.5 It is in the aforesaid set of circumstances that the writ applicant is here before this Court, seeking appropriate relief, as prayed for in this writ application.

3.6 Ms. Vaibhavi Parikh, the learned counsel appearing for the writ applicant would submit that there is no point in keeping the godown sealed for an indefinite period. According to Ms. Parikh, the authorities ought to have undertaken the search by breaking open the lock as they are empowered to do so under Section 67(4) of the Act, and in the course of the search or inspection, if they would have found goods liable to confiscation, then such goods could have been seized. Ms. Parikh would submit that since 2018 till this date, there has been no further action on the part of the Department, According to Ms. Parikh, even as on date, the godown remains with the seal affixed way back in the year 2018.

3.7 Ms. Parikh would submit that her client, as the owner of the godown, is ready and willing to cooperate. She would submit that if the authorities would like to look into the documents of ownership etc., then he is ready and willing to produce those documents. However, the seal should be now removed from the godown without prejudice to the right of the Department to proceed against the occupants or the users of the godown, i.e, the dealers.

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4. On the other hand, this writ application has been vehemently opposed by Mr. Dave, the learned AGP appearing for the State-respondents. According to Mr. Dave, the action which has been taken by the GST Authorities is in accordance with law. According to Mr. Dave, the Department has the information that the five dealers, who are jointly in occupation of the godown and who have stored their goods in the godown, have contravened the provisions of the Act and the Rules and, therefore, they are liable to be proceeded in accordance with law. Mr. Dave would submit that the authorities have the power under Section 67(4) of the Act to affix the seal on the premises. According to Mr. Dave, as on date, there is nothing with the Department, on the basis of which, it can come to the conclusion that the writ applicant is the owner of the godown in question and the dealers are the tenants of the writ applicant. In such circumstances, referred to above, Mr. Dave prays that there being no merit in this writ application, the same be rejected.

5. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the writ applicant is entitled to the reliefs as prayed for in this writ application.

6. We may straightway, once again, look into the sealing memos. The plain reading of the contents of the sealing memos would indicate that after the seal was affixed, the authorities had to stop further action for the reasons recorded in the memos. The reasons recorded in the memos are as under;

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"1. To avail Wrong ITC
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3. Try to neglect searching team
4. Non-Co-operation in search process."

7. In one of the memos, it has been stated that the place of business is found to be closed and no authorized person was found to be present. We are not able to understand how could such grounds be the reason for not taking further action in the matter. What has been stated above could be in the form of accusation against the dealers, for which, it is always open for the Department to proceed in accordance with law. It is not the case of the respondents that the writ applicant is also involved along with the dealers in one way or the other. Section 67 of the Act, 2017 is with regard to power of inspection, search and seizure. Section 67(2), relevant for our purpose, reads thus;

> "*(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:*
>
> *Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:*

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Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act."

8. Section 67(4), also relevant for our purpose, reads thus;

"(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied."

9. The plain reading of the aforesaid two provisions of law makes it clear that if the proper officer, not below the rank of Joint Commissioner, either pursuant to a search carried out under sub-section (1) or otherwise has reasons to believe that any goods liable to confiscation or any documents or books, which in the opinion of the proper officer, may be useful or relevant to any proceedings which may be undertaken or such goods are liable to be secreted to any place, then the proper officer may authorize in writing any other officer of the State Tax to search and seize the goods, documents or books or things. Clause (4), referred to above, empowers the authorized officer to seal or break open the door of any premises where access to such premise is denied.

10. if it is the case of the Department that the five dealers have stored goods or other articles which are liable to confiscation, then the authorities could have seized such goods and documents long time back. Once the goods and other articles are seized from the premises, then there could be no

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good reason to keep the godown in a sealed condition. In the case on hand, the writ applicant, being the owner of the godown is concerned with the seal which has been affixed and which continues as on date.

11. In the case on hand, we have not been shown anything to indicate that the proper officer had any reasons to believe that the goods stored in the godown in question are liable to confiscation. However, for the time being, we are not going into this issue. We are trying to find a way out, by which, the seal can be removed without prejudice to the rights of the department to proceed against the dealers in accordance with law.

12. We dispose of this writ application with the following directions;

"(i) The officials of the Department, who are present in the Court today for the purpose of assisting the learned AGP, makes a statement that they will visit the place where the godown in question is situated on 10th February, 2020 at 2:00 p.m. They further make a statement that they will break open the seal and undertake the search of the godown by drawing appropriate Panchnama. If there are reasons to believe that the goods stored in the godown are liable to confiscation or any documents or books or things, which in their opinion, may be useful or relevant to any proceedings under this Act, then they may seize such goods, documents etc.

(i) Once the aforesaid exercise is completed, it shall be open

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for the writ applicant to takeover the possession of the godown. At the same time, we direct the writ applicant to remain present on 10th February, 2020 at 2:00 p.m. at the place where his godown is situated with the documents evidencing ownership. However, the authorities should not be more concerned with the contractual relationship between the writ applicant and the dealers. We are still not able to understand why the authorities, under the GST Act, are insisting for proof of ownership and rent agreement. We are of the view that the authorities cannot insist for such documents. If they want to proceed against the five dealers, they may proceed. They should be concerned with the goods or other articles stored in the godown which may be liable to confiscation. There is no point in keeping the godown closed with a seal affixed on it.

13. With the above directions, this writ application is disposed of.

Direct service is permitted.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

Vahid

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