

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 6777 of 2023**

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NIRAJKUMAR NARESHKUMAR LAKHYANI (PRO. OF M/S OM
MULTITRADE)
Versus
STATE OF GUJARAT

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Appearance:

MR VINOD N TANDON(10042) for the Petitioner(s) No. 1
MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
for the Respondent(s) No. 2,3
MR. RAJ TANNA, ASSISTANT GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 27/04/2023

ORAL ORDER

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

Heard learned advocate Ms. Vaibhavi Parikh for the petitioner and learned Assistant Government Pleader Mr. Raj Tanna for the respondent No.1 State and its authorities.

2. In this petition filed under Article 226 of the Constitution, the petitioner has prayed to set aside order dated 30.11.2022, whereby the Current Bank Account No.045361900003074 of the petitioner held with the YES Bank Limited, came to be provisionally attached. By way of interim prayer, the petitioner has prayed to lift the said attachment.

2.1 Following interim prayer was made in para 7(c),

“pending the admission, hearing and final disposal of this petition, permit the petitioner to make payment towards the outstanding tax amount to the tune of Rs. 2,13,04,290/- in twelve equal installments”

3. The petitioner is engaged in the business of trading in metal scrape and holds valid registration certificate under the Central Goods and Services Tax Act, 2017 and the Gujarat Goods Services and Tax Act, 2017.

3.1 It appears that a visit was paid by the officers of the respondents on 29.11.2022 at the business premises of the petitioner to enquire about the details of certain purchases, but the premises of the petitioner was closed.

3.2 It further appears that the summons was issued on 30.11.2022 under section 70(1) of the Central Goods and Services Tax Act, 2017 and under section 70(1) of the Gujarat Goods and Services Tax Act, 2017. Subsequently, the authorities attached the aforementioned bank account of the petitioner.

4. On 25.4.2023, the following order was passed,

‘Learned advocate Ms. Vaibhavi Parikh seeks time stating that as per prayer made in paragraph No. 7(c), the petitioner is ready and willing to make payment of outstanding tax in 15 equal installments. She further stated that she would also file a separate undertaking giving the schedule of payment incorporating 15 equal installments by which the amount may be paid.’

5. When the petition came up for consideration today, learned advocate for the petitioner, apropos to the aforesaid order dated 25.4.2023, tendered on record the undertaking filed by the petitioner Nirajkumar Nareshkumar Lakhyani stating to be residing at Matru Krupa, Plot No. 45, Survey No. 72/01 Gokuldham, Galpadar, Gandhidham.

5.1 In the undertaking, the following aspects are stated, which are not disputed.

“(c) It is pertinent to mention at this stage that there are no adjudication proceedings pending in the case of the Petitioner before the Respondents.

(d) The respondent No.3 somewhere in December, 2022 tendered an unsigned statement of disputed input tax credit which indicated total outstanding amount to the tune of Rs. 2,13,04,290/- (CGST-Rs. 1,06,52,145/- + SGST – Rs. 1,06,52,145/-).”

5.2 The petitioner has on oath further undertook to pay the disputed tax liability adjudged to the tune of Rs. 2,13,04,290/- by paying the same in 15 equal monthly installments.

5.3 The petitioner has stated on oath thus,

“(e) I hereby undertake without prejudice that the Petitioner shall pay the said unascertained and proposed so-called liability computed by the Respondent No.3 which has yet not been crystalised as mentioned in the unsigned and undated Statement amounting to Rs. 2,13,04,290/- (CGST-Rs. 1,06,52,145/- + SGST – Rs. 1,06,52,145/-) in 15 (fifteen) equal monthly installments commencing from May, 2023.

(f) The said payment to the tune of Rs. 2,13,04,290/- made by the Petitioner is without prejudice to the rights and contentions of the Petitioner to defend as per law, any order or direction whereby the proposed so-called liability to the tune of Rs. 2,13,04,290/- is eventually finalized and becomes a statutory liability pursuant to any adjudication order to that effect being passed.”

5.4 In other words, the petitioner has shown readiness and willingness to pay up the demand of Input Tax Credit raised by the authorities although without prejudice to the rights and contentions of the petitioner in the future adjudicatory proceedings, which may commence.

5.5 According to learned Assistant Government Pleader and as stated above, summons under section 70(1) of the Central Goods and Services

Tax Act, 2017 and under section 7091) of the Gujarat Goods and Services Tax Act, 2017, is issued. This aspect is fortified by the petitioner also.

6. In view of the above position arising where the petitioner would be paying within span of 15 equal monthly installments the tax demanded, order dated 30.11.2022 provisionally attaching Current Bank Account No.045361900003074 of the petitioner held with the YES Bank Limited, is hereby set aside. As a consequence, the attachment of the abovementioned bank account shall be lifted forthwith.

6.1 In future proceedings, if any, the rights and contentions of both the sides shall remain open.

6.2 This court has not gone into the merit aspects of the case of either of the parties.

7. The petition is disposed of as allowed in the aforesaid terms.

Direct service is permitted today.

(N.V.ANJARIA, J)

(D. M. DESAI, J)

C.M. JOSHI

