

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 9488 of 2023**

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VIPULCHANDRA PURSOTTAMDAS MAHANT PROP OF VAIBHAVI
CONSTRUCTION

Versus

ASSISTANT COMMISSIONER OF STATE TAX

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Appearance:

MR SAHIL J RAO(13319) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2,3,4,5

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CORAM: **HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**
and
HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 22/06/2023

ORAL ORDER**(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

[1] This petition is filed under Article 226 of the Constitution of India, in which, the petitioner has prayed that the respondent No.1 and 2 be directed to transfer the proceedings in connection with the case of the petitioner alongwith the documents which are in their possession to Directorate General of GST Intelligence, Vadodara Regional Unit i.e. respondent no.4 herein. It is also prayed that respondent no.4 be directed to complete the proceedings at the earliest. It is also prayed that the summons issued by concerned respondent no.1 be quashed and set aside.

[2] Heard the learned advocate Mr.Sahil Rao for the petitioner, learned Assistant Government Pleader Mr.Pranav Trivedi for respondents no.1 to 3 and learned Standing Counsel Mr.Priyank Lodha for respondent no.4.

[3] Learned advocate for the petitioner has referred to the averments made in the memo of petition and thereafter submitted that the inspection was carried out by the respondent no.4 at the premises of the petitioner under Section 67(1) of the Central/State Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'). The said investigation was carried out on 10.12.2021 and is still pending before the respondent no.4

3.1 It is submitted that, thereafter respondent no.1 & 2 also issued summons under Section 70 of the Act to the petitioner and petitioner is asked to supply the necessary documents in connection with the inquiry initiated by the respondents no.1 & 2. It is further submitted that the petitioner has specifically informed to respondents no.1 and 2 vide communication/reply dated 10.05.2023 that the documents as demanded by the concerned respondent, are in possession of respondent

no.4 herein and therefore. the respondent no.1 & 2 have no authority to proceed further with the inquiry in connection with the same subject matter.

3.2 It is submitted that in spite of the said reply given by the petitioner on 23.05.2023, another communication has been addressed to the petitioner whereby the petitioner is directed to remain present with the necessary details/documents/evidence to point out that for the same subject matter investigation/inquiry is pending before the respondent no.4, therefore, at this stage, petitioner has preferred the present petition.

3.3 Learned advocate for the petitioner has referred and relied upon Section 6(2)(b) of the CGST Act which reads as under:

“(b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.”

3.4 Learned advocate has placed reliance upon Section 6(2)(b) of the CGST Act and submitted that the first investigation/inspection/inquiry is initiated by the respondent no.4 in connection with the petitioner and therefore, it is not open for the respondents no.1 & 2

herein to inquiry into the same aspects and therefore, respondents no.1 & 2 be directed to transfer the documents/inquiry to respondent no.4. It is submitted that the petitioner will co-operate with the inquiry which is initiated by the respondent no.4. and produce all the relevant/required documents/evidence before the respondent no.4.

[4] Learned AGP Mr.Pranav Trivedi for the respondents after taking instructions from the respondent nos.1 & 2 has placed on record the communication dated 15.06.2023 addressed by the respondent no.4 to the concerned respondent wherein it has been specifically stated that the respondent no.4 is inquiring into the matter in connection with the five different Firms including Firm viz. M/s. J.M. Enterprise, for which, summons were issued to the petitioner. The said aspect is also clarified by the learned Standing Counsel Mr.Priyank Lodha appearing for respondent no.4.

[5] In view of the aforesaid facts and circumstances of the present case, when the respondent no.4 has initiated the inquiry and inspected the documents and carried out the inspection at the place of

the petitioner and inquiry is going on in connection with five different Firms at present including M/s. J.M. Enterprise, for which, the summon was issued by the respondent no.1, whereas M/s Galaxy Enterprise, summon was issued by respondent no.2. Hence, we are of the view that the present petition deserves consideration.

5.1 The respondents no.1 & 2 are directed to transfer the papers/documents to respondent no.4 for necessary inquiry/investigation in connection with both the Firms viz. M/s.J.M. Enterprise and M/s. Galaxy Enterprise.

5.2 The petitioner is directed to co-operate with the respondent no.4 and produce necessary/required documents demanded by respondent no.4 for the purpose of investigation/inquiry and thereafter, it is open for the respondent no.4 to pass an appropriate order/take appropriate action in accordance with the law.

[6] In view of the above, the petition is allowed to the aforesaid extent.

(VIPUL M. PANCHOLI, J)



(D. M. DESAI,J)

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