

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 3796 of 2022

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M.P COMMODITIES PVT. LTD.
Versus
STATE OF GUJARAT

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Appearance:

A S TRIPATHI(7613) for the Petitioner(s) No. 1,2

NOTICE SERVED for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 09/03/2022

ORAL ORDER

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

1. The matter is taken up for final disposal with the consent of the learned counsel appearing for the parties.
2. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

“(A) That Your Lordships may be pleased to issue a Writ of Certiorari, or any other appropriate writ, order or direction quashing and setting aside Orders in Form GST-DRC-07 dated 18.12.2021 and 27.12.2021 (Annexure - “F”) passed by the Assistant Commissioner of State Tax. Division-3. Gandhinagar, the second respondent herein with a direction to him to consider and decide the Petitioner’s submissions by verifying the documentary and other evidence, and to decide the issue involved in this case in accordance with law;

(B) That Your Lordships may be pleased to issue a Writ of Certiorari, or a Writ of Mandamus, or any other appropriate writ, order or direction quashing and setting aside the two Show Cause Notices both dated 21.10.2019, in Form GST DRC-01 (Annexure-“C”) with a direction to issue in accordance with law proper show cause notices with clear/explicit reasons and grounds for the proposals therein against the Petitioners:

(C) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to stay implementation and execution of Orders in Form GST-DRC-07 dated 18.12.2021 and 27.12.2021 (Annexure-"F") passed by the Assistant Commissioner of State Tax, Division-3, Gandhinagar, thereby staying any coercive measures of recovery against the Petitioners pursuant to this adjudication orders dated 18.12.2021 and 27.12.2021 made by the 2nd Respondent herein:

(D) An ex-parte ad-interim relief in terms of Para 18(C) above may kindly be granted:

(E) Any other further relief that may be deemed fit in the facts and circumstances of the case may also please be granted."

3. We need not delve much into the facts giving rise to this litigation as this writ application can be disposed of on a short ground.

4. We have heard Mr. P.M. Dave, the learned counsel appearing with Mr. A.S. Tripathi, the learned counsel for the writ applicants and Mr. Utkarsh Sharma, the learned AGP appearing for the respondents.

5. Our order dated 23.02.2022 reads thus:

"We have heard Mr.P.M.Dave, the learned counsel appearing for the writ-applicants and Mr.Utkarsh Sharma, the learned AGP appearing for the respondents.

Prima facie, it could be said that the impugned assessment orders passed by the Assistant Commissioner of State Tax, Division No.3, Gandhinagar, Gujarat State, Ahmedabad, dated 18th December 2021, relevant for the two assessment years, are non-speaking orders.

We were inclined, at the threshold, to quash and set aside both the impugned orders and remit the matter to the Assistant Commissioner for de novo hearing with a direction to pass a speaking order. However, Mr.Sharma, the learned AGP, made a request that let a short notice be issued to the respondents.

Let NOTICE be issued to the respondents for final disposal of this writ-application, returnable on 9th March 2022. On the returnable date, notify this matter on top of the board.

Let there be an ad interim order in terms of paragraph 18(C)."

6. Today, when the matter was taken up for further hearing Mr. Sharma, the learned AGP very fairly submitted that both the impugned assessment orders could be termed as non-speaking orders. Although, Mr. Sharma, tried to point out from the original record that all the relevant aspects of the matter were duly considered yet, Mr. Sharma, fairly submitted that the same is not reflected in the impugned orders.

7. We dispose of this writ application by quashing and setting aside the orders in Form GST-DRC - 07 dated 18.12.2021 and 27.12.2021 respectively (Annexure - F), passed by the Assistant Commissioner of State Taxes, Division - 3, Gandhinagar, and remit the matter to the Assistant Commissioner of State Tax, Division - 3, Gandhinagar, for fresh hearing of the matter. The impugned orders are accordingly quashed and set aside.

8. The Assistant Commissioner of State Tax, Division - 3, Gandhinagar, shall hear the writ applicants once again. This time, the Assistant Commissioner of State Tax, Division - 3, Gandhinagar, shall ensure that a reasoned order is passed dealing with each and every submission that may be raised on behalf of the writ applicants.

9. Let this entire exercise be undertaken at the earliest and completed within a period of three months from today. We also permit the writ applicants to make their oral submissions and also file submissions in writing. It shall be open for the writ applicants to even question the legality and validity of the show cause notices itself.

10. With the aforesaid, this writ application stands disposed of. Interim relief stands vacated.

11. Direct service is permitted.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

