

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 1654 of 2021**

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M/S UNIVERSAL DYECHEM PRIVATE LIMITED

Versus

UNION OF INDIA

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Appearance:

PARTH S SHAH(8375) for the Petitioner(s) No. 1,2

for the Respondent(s) No. 1,2,3,4

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 01/02/2021

ORAL ORDER

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

1. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs;

“(A) To issue writ of mandamus and/or any other appropriate writ(s) to direct the Respondent No.3 to release the documents as mentioned in Form GST INS-02 dated 06.02.2020 (Annexure-C), after retaining photocopies of the same within a time frame to be fixed by the Hon'ble Court;

(B) To issue writ of mandamus and/or any other appropriate writ(s) to direct the Respondent No.3, alternatively to provide photocopies of all the documents as mentioned in Form GST INS-02 dated 05.02.2020 (Annexure-C) within a time frame to be fixed by this Hon'ble Court;

(C) To grant ad-interim relief with respect to prayer under Para-(a) & Para (b) above;

(D) To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

(E) To issue Rule Nisi in terms of Prayers (a) to (d) above;

(F) To award Costs of and incidental to this application be paid by the Respondents."

2. The writ applicant No.1 is a Company and the writ applicant No.2 is one of the Directors of the Company. The firm is engaged in the business of manufacturing and trading of dyes and chemicals. The principal place of business of the firm is at Jodhpur (Rajasthan). It appears that the firm also has a branch at Surat. The respondent No.3 and other officers of the DGGST conducted search and seizure at the principal place of business at Jodhpur on 14th February, 2020. An order of seizure of certain documents dated 14th February, 2020 came to be passed in Form GST INS-02. It appears that the search proceedings were also initiated at Surat Branch of the firm on 6th February, 2020. The Directors of the firm were also issued summons under Section 70 of the Act for the purpose of their interrogation.

3. It is the case of the writ applicants that in the course of the seizure proceedings, various documents like stock register, sale and purchase invoices, bills, books of accounts, ledger accounts etc. were seized. It has been more than ten months that such documents are not being returned. Neither photocopies of the same are being provided to the writ applicants. It appears that a show-cause notice has also been issued pursuant to the search proceedings under Section 67.

4. Mr. Gatani, the learned counsel appearing with Mr. P.S. Shah, the learned counsel appearing for the writ applicants

would submit that despite making numerous requests in writing for the return of such documents, the respondent No.3 has not responded till this date. It is submitted that all those documents are required by the writ applicants for their day to day business, more particularly, for the purpose of audit and filing of the returns. One of the submissions of the learned counsel is that the documents which are demanded by the writ applicants do not form part of the show-cause notice and in such circumstances, the writ applicants have reasons to believe that all such documents have not been taken into consideration for the purpose of issue of the show-cause notice and further proceedings. Mr. Gatani invited the attention of this Court to the last representation dated 21.12.2020 addressed and forwarded to the respondent No.3 herein making a request for providing the copies of the documents which came to be seized under Section 67. The representation is at Page-114 of the paper-book, Annexure-P.

5. We find reference of many orders passed by various High Courts in this regard and we also find reference of many CBIC circulars in this regard. In such circumstances, we expect the respondent No.3 to look into the representation dated 21.12.2020, Annexure-P to this writ application, Page-114 and take an appropriate decision in accordance with law in that regard.

6. We are of the view that once the show-cause notice is issued to the party concerned, the documents/records, which have not been relied upon, should be returned to the party. This is what even is suggested in the master circular dated 19.01.2017 which has been referred to in the representation.

In the master circular, in clear terms, it has been stated that a show-cause notice and the documents relied upon in the show-cause notice, should be served on the assessee for initiation of the adjudication proceedings. However, the documents/records which are not relied upon in the show-cause notice, are required to be returned under proper receipt to the person from whom those are seized.

7. In view of the aforesaid, we dispose of this writ application with a direction to the respondent No.2 to immediately look into the representation at Page-114, Annexure-P to this writ application and take an appropriate decision in accordance with law within a period of one week from the date of the communication of this order. We hope that an appropriate decision in accordance with law is taken and the writ applicants are not dragged to a second round of litigation.

8. With the above, this writ application stands disposed of.

9. In the event if the Respondent No.3 is of the view that such documents, as demanded by the writ applicants, cannot be returned, then he shall assign cogent reasons for such decision and communicate the same in writing to the writ applicants so that they can take necessary recourse available to them in law.

Direct service of the order is permitted.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

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