IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4835 of 2018

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M/S. REMARK FLOUR MILLS PVT. LTD.
Versus
STATE OF GUJARAT
==
Appearance:
KUNTAL A PARIKH(7757) for the PETITIONER(s) No. 1,2
for the RESPONDENT(s) No. 2
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the RESPONDENT(s) No. 1
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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 28/03/2018

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

The petitioners are registered dealers under the Central Goods and Services Tax Act and are engaged in the business of manufacture and supply of wheat flour, meslin flour, cereal flours etc. The GST authorities had conducted a search at the business premises of the petitioners and carried a prima facie belief that the petitioners were selling branded goods without paying necessary taxes thereon.

A notice dated 27.2.2018 came to be issued by the Assistant Commissioner of State Tax, Vadodara under section 74(1) of the CGST Act estimating the petitioners' total tax and other liabilities at Rs.30.88 lacs (rounded off) calling upon the petitioners to remain present on 5.3.2018 showing cause why such amount should not be collected.

On 27.2.2018, the said officer wrote two separate letters to the petitioners' banks i.e. IDBI bank, Alkapuri and Union Bank of India, Nizampura provisionally attaching the bank accounts for the due amount of Rs. 30.88 lacs of taxes. On 19.3.2018, said officer issued a further notice in purported exercise of powers under sub-section(3) of section 74 of the CGST Act estimating the petitioners' taxes and other dues at Rs.1.29 crores (rounded off).

The petitioners have essentially challenged the attachment of the bank accounts as also the further notice dated 19.3.2018.

Counsel for the petitioners submitted that the State authorities had under coercion forcibly collected taxes of Rs.19,74,886/- which was wholly impermissible. Counsel further submitted that the action of attaching the bank accounts of the petitioners is a drastic measure and in facts of the present case could not have been exercised. Reliance is placed on the decision of this Court in case of **Automark Industries (I) Ltd v. State of Gujarat and others** reported in 2014 SCC Online Guj 14217. Counsel also contended that the further notice dated 19.3.2018 covered the same period for which previous notice dated 27.2.2018 was issued. Sub-section(3) of section 74 permits the authority to issue the notice for a period other than the period for which notice under sub-section(1) of section 74 of CGST Act has been issued. Subsequent notice dated 19.3.2018 was therefore, without jurisdiction.

Notice returnable on 12.4.2018.

Counsel for the petitioners submitted that even before the final assessment is made, the authorities have exercised drastic powers of attaching the bank accounts and eventually stifle the petitioners' business. The petitioners have balance of approximately Rs. 4 lacs in Union Bank of India and approximately Rs.44 lacs in IDBI bank. Additionally, the petitioners also have stock of goods worth Rs. 90 lacs approximately.

By way of ad interim relief, the above attachment is suspended of both the bank accounts on the condition that :

1) The balance as on today in both the bank accounts shall be maintained.

2) The petitioners shall maintain a minimum stock balance of Rs. 50 lacs

Direct service is permitted.

(AKIL KURESHI, J)

(B.N. KARIA, J)

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