

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 18391 of 2021**

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AB TRADERS  
Versus  
STATE OF GUJARAT

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Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1  
for the Respondent(s) No. 2

ADVANCE COPY SERVED TO MR TRUPESH KATHIRIYA, ASST.  
GOVERNMENT PLEADER/PP for the Respondent(s) No. 1

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**CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI**  
and  
**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 24/12/2021

**ORAL ORDER**  
**(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)**

1. The petitioner is a proprietorship concerned having the business place at Karnataka, it is duly registered with the Central/Karnataka Goods and Services Tax Act, 2017.

2. The petitioner received an order or purchase of arecanut from a buyer in New Delhi. It appointed transporter for such

transportation, it also averred to have conveyed to the transporter that movement of goods was to commence only after both tax invoices as well as e-way bill were given to the driver. It is further averred that the petitioner's area was facing intermittent network outage. The transporter being in a hurry to complete the task assigned and as the goods had already been loaded to the vehicle commenced movement of goods without waiting for e-way bill to be generated and given by the petitioner.

2.1 On 07.09.2021 the truck loaded with the goods was intercepted by the respondent No.2. The driver produced the tax invoice as well as the transport receipt, there was no discrepancy found in the quantity as per

invoice and the quantity loaded with the conveyance. However, the goods had been detained since e-way bill was not available with the driver.

2.2 On 10.09.2021 the detention order and confiscation notice were served to the petitioner. Apart from non-availability of e-way bill, the authority has alleged that the registration of the recipient was being shown as suspended and that the goods had been undervalued.

2.3 On 17.09.2021 on receipt of notice, the petitioner addressed a letter to the authority and request was made preliminary objections raised to invoke the powers of confiscation under Section 130 of the Goods and Services Tax Act, 2017 (the GST Act' hereinafter) and the request is

also made to provisionally release the goods and the vehicle in accordance with provisions of Section 67 (6) of the GST Act.

2.4 So far as the allegation of suspension of registration of the buyer was concerned, the petitioner was pointed out that there seemed to be some error on the part of the authority as the registration of the buyer was very much active.

2.5 On 20.09.2021 the written reminder was also given by the petitioner. The respondent No.2 neither provisionally nor finally released the goods nor was ready to drop the confiscation proceedings. According to the petitioner, the respondent No.2 was proposing to pass final confiscation order. The petitioner,

therefore, preferred Special Civil Application 14306 of 2021 before the Court for quashing and setting aside the detention order and confiscation notice or in alternative to direct the provisional release of the goods and conveyance.

2.6 On 23.09.2021 this Court disposed of the petition with a direction to decide the provisional release application without any further loss of time and to proceed for adjudication of confiscation notice after a period of two weeks from the date of deciding the provisional release application.

2.7 On 28.09.2021, this was intimated to the respondent No.2 and request was made for provisional release of goods and conveyance. However, the respondent No.2

had not abided by the Court's direction. On 25.10.2021 written reminder was also sent and therefore, the petitioner was constrained to prefer Special Civil Application No.16419 of 2021 before the Court and during the pendency, the petitioner received a communication from the respondent permitting provisional release on payment of tax/penalty and on furnishing Bank Guarantee for the value of goods.

2.8 On 28.10.2021 the petitioner was aggrieved by the condition of the Bank Guarantee, the Court had permitted him to approach the authority concerned.

2.9 On 31.10.2021 the petitioner made a representation to the respondent authority urging that he was ready to make payment of

tax and penalty, for the remaining amount the statutory provision required furnishing of the bond and not Bank Guarantee. Therefore, the request is made to drop the condition of the Bank Guarantee. He has also relied on the decision of this Court rendered in case of ***Western Enterprises vs. State of Gujarat*** passed in Special Civil Application No.1368 of 2021.

2.10 On 12.11.2021 such representation was accepted and revised letter was issued whereby the goods were ordered to be provisionally released on payment of tax, penalty and furnishing of bond.

2.11 In due compliance on 16.11.2021 the petitioner made payment of tax, penalty as well as furnished the bond. However, the respondent No.2 did not release the goods

or conveyance. Instead on 20.11.2021 the respondent issued another letter intimating the petitioner that the goods and conveyance will be released provisionally on furnishing security along with the bond.

2.12 On 20.11.2021 the petitioner requested for the provisional release since the tax and penalty had already been paid and bond was furnished, however, that was not done and hence, his goods and vehicle continued to be detained. According to the petitioner, this is wholly arbitrary and illegal action. The representation had also been made contending that while it was ready to make payment of tax and penalty, for the remaining amount the statutory provision only required furnishing of bond. The demand for security is totally

mechanical and contrary to the decision of this Court in case of ***Western Enterprises (supra)***. No collateral security is necessary and even as per Section 67(6) of the GST Act, the bond is only required where the taxable person opts to furnish the security for tax, interest and penalty. According to the petitioner, here there is no requirement for giving a bond in a case where the taxable person makes payment of tax, interest and penalty.

2.13 This Court at the time of issuance of notice on 08.12.2021 passed the following order:

*“The petitioner once again is before this Court on the ground that the respondent has demanded additional security for the provisional release of goods along with Conveyance being KA-14-C-0878 by letter dated 20.11.2021. The petitioner before this Court seeking following prayers:*

**“34.**

*(A) This Hon’ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order directing the respondents to forthwith provisionally release the goods along with truck No.KA-14-C-0878 and impugned communication dated 20.11.2021 (annexed at Annexure O) demanding additional security may be pleased to quash and set aside.*

*(B) Pending notice, admission and final hearing of this petition, this Hon’ble Court may be pleased to direct the respondents to forthwith provisionally release the truck number KA-14-C-0878 along with goods contained therein.”*

*Issue Notice returnable on 16.12.2021. till then, no further order shall be passed.*

*Direct service through Speed Post over and above regular mode of service is permitted.”*

3. On the returnable date, the learned AGP, Mr.Trupesh Kathiriya appeared and confirmed that there had been no

provisional release only because of the security is furnished along with the bond.

4. This Court notices that in second time when Special Civil Application No.16419 of 2021 was preferred, the Court had disposed of the petition as withdrawn since there was positive indication on the part of the respondent authority for release of the vehicle and hence, directing the respondent to consider all the issues raised before it, the Court permitted the petitioner to approach the concerned authority while disposing of the petition in its order dated 28.10.2021.

5. This Court notices that pursuant to the order passed by this Court, on 31.10.2021 itself, the request was made for provisional release of the goods and

conveyance being number KA-14-C-0878. Reference is also made of provision of law to urge that the insistence on the part of the respondent for furnishing of securities is not necessary.

6. Section 67(6) of the Gujarat Goods and Service Tax Act, 2017 ('the GST Act' hereinafter) speaks of the provisional release:

*“67(6): The goods so seized under sub-section(2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.”*

7. It is clear that the goods seized can be released under Sub-section (2) of Section 67 of the GST Act on a provisional basis upon execution of the bond and

furnishing of the security and on payment of applicable tax, interest and penalty as the case may be. Section 129(2) of the GST Act provides for adopting of provision of Section 67(6) of the GST Act which says that the provision of Sub-section (6) of Section 67 shall *mutatis mutandis* apply for detention and seizure of goods and conveyance.

7.1 According to the petitioner, Section 67(6) of the GST Act provides for two options for the taxable person for securing provisional release one; execution of bond and furnishing security and two; payment of applicable tax, interest and penalty. The quantum of security in case of the first option is as prescribed under Rule 140(1) of the Central Goods and

Services Tax Rules, 2017 or Gujarat Goods and Services Tax Rules, 2017. Rule 140 states as follow:

*“140.(1) The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in FORM GST INS-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.*

*Explanation- For the purposes of the rules under the provisions of this Chapter, the applicable tax” shall include central tax and State tax or central tax and the Union territory tax, as the case may be and the cess, if any, payable under the Goods and Services Tax (Compensation to State) Act, 2017.*

*(2) In case the person to whom the goods were released provisionally fails to produce the goods at the appointed date and place indicated by the proper officer, the security shall be encashed and adjusted against the tax, interest and penalty and fine, if any payable in respect of such goods.”*

8. It is, therefore, urged by the petitioner that if in case of first option, the Bank Guarantee is to be given only for

the amount of the tax, interest and penalty and no requirement for the Bank Guarantee for value of goods. Here, the petitioner has paid tax and penalty and also has furnished the bond for value of the goods and therefore, the requirement for the Bank Guarantee is urged to be dropped. The petitioner has relied upon the decision in case of ***Western Enterprises (supra)*** where the court has held thus:

*“1. By this Misc. Civil Application, the applicant – original petitioner has prayed for the following relief :-*

*“A. This Hon'ble Court may be pleased to clarify that the “bond” as mentioned in order dated 8.2.2021 is not required to be accompanied by bank guarantee/security and that the goods/vehicle are required to be released on the basis of challan and bond as submitted by the Applicant.”*

*2. While disposing of the main matter i.e. Special Civil Application No. 1368/2021 vide order dated 08.02.2021, this Court observed in para 5 as under:-*

*“5. Let the proceedings with respect to the confiscation proceed further in accordance with law. We are not inclined to interfere at this stage. However, we are inclined to order provisional release of the goods pending the confiscation proceedings on the condition that the writ applicant shall deposit an amount of Rs.18 Lakh with the respondent No.2 towards the tax and penalty. For the balance amount towards fine of Rs.52 Lakh, the writ applicant shall execute a bond to the satisfaction of the respondent No.2 with an undertaking that ultimately, if the goods are held liable to be confiscated, he shall make good the entire payment towards fine in lieu of confiscation. This writ application is disposed of directing the respondent No.2 to release the goods on payment of Rs.18 Lakh and other conditions as imposed by this Court.”*

*3. We have heard Mr. Uchit N. Sheth, the learned counsel appearing for the applicant and Mr. Utkarsh Sharma, the learned AGP appearing for the opponents.*

*4. It is very sad to note that, the respondent No.2 being an officer of the GST Department has no idea as to what is a “bond” and what is a “bank guarantee”. There is no good reason for the respondent No.2 to be wiser than what the Court has stated in para 5 of the order referred to above. We made ourselves very clear that the goods shall be released on deposit of an amount of Rs.18 Lakh and so far the balance amount of*

*Rs.52 Lakh towards fine is concerned, the writ applicant shall execute a bond to the satisfaction of the respondent No.2. There is a fine distinction between the bond and bank guarantee. Our order in the main matter is dated 08.02.2021. Almost one month has passed, but the respondent No.2 has not given effect to our order only because of his misconception of law. We could have taken a very serious note of this, but we refrain ourselves from observing anything further in this regard.*

*5. We once again direct the respondent No.2 to release the goods once the writ applicant deposits an amount of Rs.18 Lakh towards the tax and penalty and executes a bond for the balance amount of Rs.52 Lakh.*

*6. We request Mr. Utkarsh Sharma, the learned AGP to make the respondent No.2 understand the consequences, which he may have to face in future for getting wiser than the Court. We clarify that, the respondent No.2 shall not go by the proforma which Mr. Utkarsh Sharma is taking about. When we say bond, means bond in accordance with law and not the bank guarantee in its true sense. The difference between a Bank Guarantee and a Bond is that to obtain a Bank Guarantee, there is a requirement of collateral to satisfy the bank, while Bonds do not need collateral to act as a surety.*

*7. With the above clarification, present application stands disposed of.”*

9. The Court itself made it clear that

there is a difference between Bond & Bank Guarantee. It being a vital distinction between the bond and the Bank Guarantee, once the writ applicant executes a bond to the satisfaction of the authority, the authority concerned cannot insist for the Bank Guarantee.

9.1 Here also, relying on the such decision, a categorical request is made not to insist on the Bank Guarantee.

9.2 Since there is binding decision in this regard, the authority concerned instead of asking for the Bank Guarantee has insisted on furnishing of the security.

10. It is quite clear that second option of furnishing the security for tax, interest and penalty, there will be no

requirement for giving the bond in a case where the person has already made payment of tax, penalty and interest. The petitioner has already made payment of tax and penalty as well as furnished the bond and since the petitioner is unable to insist on the Bank Guarantee, when the requirement is of execution of the bond, to insist on the furnishing the security is something undesirable.

11. The communication dated 30.09.2021 received by the respondents, permitting provisional release on payment of tax, penalty and furnishing the Bank Guarantee for the value of goods. The representation of the petitioner was to the effect that it was ready to make payment of tax and penalty so far as the remaining amount is

concerned, the statutory provision required the furnishing of the bond. The revised letter on 12.11.2021 ordered provisional release of the goods and conveyance upon payment of tax and penalty and furnishing of the bond. After its compliance, to insist on the further security merely because the Court had in case of **Western Enterprises (supra)** already made a distinction between the bond and the Bank Guarantee and when the petitioner has opted for the first option, the communication dated 20.11.2021 appears to be contrary to the decision of the **Western Enterprises (supra)**. The collateral security would not be necessary.

12. Resultantly, present petition is allowed. The respondent is directed to

release the goods and conveyance being No. KA-14-C-0878 since the bond has already been furnished as is required under the Rule. No further insistence shall be made on the part of the respondent. Additionally, the petitioner shall provide the detail of the assets/properties for the authority concerned to recover the bond amount in case of any such requirement. Let those details be produced on record.

13. Over and above the regular mode of service, direct service is permitted through speed post as well as e-mode.

**(SONIA GOKANI, J)**

**(NISHA M. THAKORE, J)**

M.M.MIRZA