

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 16555 of 2019**=====  
**MONTAGE ENTERPRISES PVT. LTD.**

Versus

**STATE OF GUJARAT**  
=====

Appearance:

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

MS MAITHILI MEHTA, ASST. GOVERNMENT PLEADER, NOTICE SERVED  
BY DS(5) for the Respondent(s) No. 1,2  
=====**CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI**

and

**HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****Date : 30/09/2019****ORAL ORDER****(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. Ms. Maithili Mehta, learned Assistant Government Pleader, has tendered affidavit-in-reply of the respondents. The same is taken on record.

2. Rule. Ms. Maithili Mehta, learned Assistant Government Pleader, waives service of notice of rule on behalf of the respondents.

3. Having regard to the controversy involved in the present case, which lies in a very narrow compass and with the consent of the learned advocates for the respective parties, the matter

is taken up for final hearing.

4. By this petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to forthwith release the Truck No. MP-09-KD-9851 along with the goods contained therein. However, in the light of the averments made in the affidavit-in-reply filed on behalf of the respondents, the learned advocate for the petitioner has restricted his prayer to the release of goods, being in the nature of packing materials / aluminum foil, which has been seized under the detention order dated 06.08.2019 issued under section 129(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") and the provisions of other relevant statutes.

5. The facts as averred in the petition are that the petitioner is engaged in the business of manufacture and sale of packing materials. The petitioner regularly sells packing materials to a registered trader in the State of Gujarat by the name of M/s. Alfa Enterprises in the ordinary course of business. The petitioner had dispatched a truck-load of packing materials for delivery to M/s. Alfa Enterprises in July 2019. The driver of the truck was given tax invoice as well as e-way bill generated on the online portal and the

driver was also carrying a transport receipt thereof. As the goods were nearing their destination, as mentioned in the e-way bill, the concerned employee of the petitioner telephonically informed the customer that the goods were about to be delivered. However, to the surprise of the employee, the customer informed him that there was no pending order from its end. Thereafter, upon internal assessment, the employee realized that the goods had been erroneously dispatched to Gujarat even though there was no pending order from M/s. Alfa Enterprises. The petitioner, therefore, immediately informed the driver to await further instructions regarding what was required to be done with the goods. While the truck with the goods was in Ahmedabad and the driver was awaiting instructions regarding further transportation, the respondent No.2, State Tax Officer (1), Mobile Squad, Division-1, Ahmedabad detained the goods under section 129 of the CGST Act on the ground that the genuineness of the goods in transit required verification. The statement of the driver was taken in the prescribed format and the same was duly signed by the driver.

6. It appears that one of the grounds mentioned in the order was that the driver or the

authorized person was not present, even though the driver had signed the statement at the time of detention. The petitioner orally requested the respondent authorities to release the goods since they were accompanied by e-way bill and tax invoice, however, the respondent authorities did not accede to such request. The petitioner also did not receive any notice for payment of tax and penalty, as envisaged under section 129 of the CGST Act. However, the petitioner received a notice dated 12.09.2019 issued under section 130 of the CGST Act for confiscation of the goods, wherein it was mentioned that the place of recipient did not exist.

7. Since the respondent No.2 is refusing to release the goods without payment of tax, penalty as well as redemption fine equal to the value of goods, as mentioned in the impugned notice, the petitioner has approached this court seeking release of the goods in question.

8. Heard Mr. Uchit Sheth, learned advocate for the petitioner and Ms. Maithili Mehta, learned Assistant Government Pleader for the respondents.

9. From paragraphs No. 10 and 11 of the affidavit-in-reply filed on behalf of the respondents, it emerges that according to the

respondents, in its statement, M/s. Alfa Enterprises, the purchaser herein, has denied purchasing any such goods, namely aluminum foils, as per the invoice and e-way bill produced by the petitioner. It appears that the respondents have issued an advertisement in the newspaper calling upon the owner of the goods, namely pan masala, for the purpose of claiming the said goods. However, till date, no one has claimed ownership of the goods being pan masala.

10. It is further averred that the petitioner has claimed the goods, namely aluminum foils, which was dispatched from Madhya Pradesh, as M/s. Alfa Enterprises has denied purchasing the said goods. The authorities do not dispute the fact that qua the aluminum foils, the conveyance possessed the mandatory documents. It is further stated that the court may not entertain the present petition qua both the conveyance as well as the goods being pan masala and that the authorities be permitted to proceed further in respect of the same.

11. Since the present petition is filed only to release the goods being packing materials/aluminum foils, in the light of the averments made in the affidavit-in-reply filed on behalf of the respondents, wherein they do not

object to the release of the goods in question, the petition deserves to be allowed.

12. For the foregoing reasons, the petition succeeds and is, accordingly, allowed to the following extent:

The impugned notice of confiscation dated 12.09.2019 issued under section 130 of the CGST Act is hereby quashed and set aside to the extent the same seeks to confiscate the goods in question, namely packing materials/aluminum foils and the respondents are directed to forthwith release the said goods. It is further clarified that insofar as the other goods being the pan masala, which was being transported in the conveyance as well as the conveyance itself are concerned, the respondents are permitted to proceed further pursuant to the impugned notice. Rule is made absolute to the above extent. Direct service is permitted.

**(HARSHA DEVANI, J)**

**(SANGEETA K. VISHEN, J)**

PRAVIN KARUNAN