IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 10825 of 2019

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NAYARA ENERGY LTD
Versus
UNION OF INDIA

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Appearance:
MR MIHIR JOSHI, SENIOR ADVOCATE with MR ROSHIL NICHANI, MR AAYOG DOSHI, MRS.DIMPLE GOHIL, ADVOCATES for NANAVATI ASSOCIATES(1375) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 1,3,4,5
MS MAITHILI MEHTA, AGP for the Respondent(s) – State

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR.JUSTICE A.C. RAO

Date : 26/06/2019

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

1. The writ-applicant is a company incorporated under the Companies Act, 1956. The writ-applicant seeks to challenge the legality and validity of the show-cause notice, purported to have been issued by the Dy. Commissioner of State Tax, Petroleum 1 and 2, Ahmedabad, in exercise of his powers under Section 74(1) of the Gujarat Goods and Services Tax Act, 2017, and Section 74(1) of the Central Goods and Services Tax Act, 2017.

2. The principal argument canvassed by the learned senior counsel appearing on behalf of the writ-applicant is that the Dy. Commissioner of State Tax has no jurisdiction to issue such a show-cause notice.

3. Mr.Joshi, the learned senior counsel appearing for the writ-applicant, first invited the attention of this Court to the definition of the term “proper officer” as provided in Section 2 (91) of the Act. Section 2 (91) reads thus :

> *(91) “proper officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;”*

4. Thereafter, our attention was drawn to Section 3 of the GST Act, 2017. Section 3 clarifies who would be the officers under the Act. Section 3 reads thus :

> “3. The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:-
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> *(a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,*
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> *(b) Chief Commissioners of Central Tax or Directors General of Central Tax,*
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> *(c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,*
>
> *(d) Commissioners of Central Tax or Additional Directors General of Central Tax,*
>
> *(e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,*
>
> *(f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,*
>
> *(g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,*
>
> *(h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and*

(i) any other class of officers as it may deem fit:"

5. The proviso to Section 3 of the Act clarifies the officers appointed under the Act shall be deemed to be the officers appointed under the provisions of this Act.

6. The submission of the learned senior counsel is that, till this date the Government has not issued any notification for appointing any of the officers enumerated from clauses (a) to (g) of Section 3, except the Commissioner of State Tax Act.

7. Mr.Joshi also invited the attention of this Court to Section 5, which is in respect of the powers of the officers. Section 5 reads thus :

> ***"Section 5 Powers of Officers :-***
> *(1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act. ;*
>
> *(2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.*
>
> *(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.*
>
> *(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax."*

8. In short, the submission canvassed is that in the absence of any specific notification issued by the State Government appointing the Dy. Commissioner of State Tax, he could not have issued the show-cause notice under Section 74 of the Act, 2017.

9. The second submission of Mr. Joshi is that the show-cause notice under challenge is also contrary to the judgment of this Court in the case of **State of Gujarat v. ONGC,** reported in **(2017) 97 VST 506 (Guj.,** wherein while interpreting the scope of the expression 'for use' in the context of sale of LPG for domestic use, this Court held the same to cover sales which are 'intended for use' by domestic household consumers. Since the notification concerned in the show-cause notice is similarly worded, the said judgment would squarely apply.

10. Having heard the learned counsel appearing for the respective parties and having gone through the materials on record, we are of the view that the writ-applicant has been able to lay down a strong *prima facie* case to have an interim order in its favour in terms of Para 48 (c). We, accordingly, grant such relief.

11. Let Notice be issued to the respondents, returnable on **17th July 2019.** Ms. Maithili Mehta, the learned AGP waives

service of notice for and on behalf of the respondent-State. Direct service is permitted.

12. To be heard along with the Special Civil Application Nos.2699 of 2019, 8177 of 2019 and 8185 of 2019.

13. On the returnable date, all the matters shall be clubbed and notified together.

(J. B. PARDIWALA, J)

(A. C. RAO, J)

KUMAR ALOK