IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION NO. 590 of 2011

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

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Approved for Reporting	Yes	No

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STATE OF GUJARAT THRO ADDL. CHIEF SECRETARY FOOD & CIVIL & ANR.
Versus
M/S AITOCHEM MANAGER, RAJESHBHAI NANDLAL PAREKH

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Appearance:
MR ROHAN RAVAL, APP for the Applicant(s) No. 1,2
ADVOCATE NOTICE UNSERVED for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 21/04/2026

JUDGMENT

1) By way of revision application under Section 397 (section 438 of BNSS) read with Section 401 (Section 442 of BNSS) of the Code of Criminal Procedure, 1973 (for short “CrPC”), the applicant – State has prayed for quashing and setting aside the judgment dated 05.10.2011 passed by learned Additional Sessions Judge, Bhavnagar, in Criminal Appeal No.64 of 2008, whereby, learned Addl. Sessions Judge has been pleased to allow the appeal filed by the respondent by quashing the order of confiscation dated 30.08.2008 passed by Collector, Bhavnagar.

2) Heard Mr.Rohan Raval, learned APP for the applicant – State. Advocate notice for the respondent is unserved.

3) Brief facts of the case are that, the respondent was engaged in the business of selling of solvents item and on 24/06/2007 the tanker bearing Registration No.GJ-2X-1115 containing FA Residual Oil 12000 liters was to be delivered to S K Impex Firm, Mamsa, Bhavnagar and on 25/06/2007 the Police Sub Inspector, LCB, Bhavnagar carried out the checking and did not find satisfactory reply from the driver and cleaner and the same was produced before the Court and thereafter learned Magistrate, Ghogha passed an order on 29/12/2007 to release the said truck. However, the Mamlatdar carried out the checking of the truck and stock in the truck and found with certain irregularities like (i) tanker contained 12000 liters of FA Residual oil which was to be delivered to SK Impex Firm, Mamsa, Bhavnagar However, as the said liquid was found to be suspicious, it was sent to FSL and as per report of the FSL, it was furnace oil mixed with water and as per Section 3 of the Solvent Refrinate and Slop (Purchase, Sale Stock and Prohibition of use in Automobiles) Order, 2000, licence to sell furnace oil requires to be obtained. And, upon verification of voucher, no such licence number is mentioned in the said vouchers. Hence, you have not obtained any licence to sell furnace oil (ii) sale was done by way of issuing false and bogus bills (iii) that accounts of business are found with irregularities (iv) by mentioning different address on the government record and bill, intention of committing irregularities is revealed.

4) Thus, upon found the above referred irregularities, the respondent committed breach of Sections 8 and 9 of the Chijarat Essential Commodities (Control and Regulation of Business) Order, 1977 and also committed breach of Section 3 of the Solvent Refrinate and Slop (Purchase, Sale Stock and Prohibition of use in Automobiles) Order, 2000, hence, total stock of FA. Residual of 12000 liters valued at

Rs.2,74,560 and tanker valued at Rs.2,20,000/- totaling to Rs 4,94,560/- was confiscated.

5) Thereafter, a show-cause notice came to be issued on 14/03/2008 by the authority narrating the irregularities committed by the respondent. In response of the show- cause notice, a written reply was submitted by respondent wherein it has been denied that any irregularities were committed by it.

6) Thereafter, the Collector, Bhavnagar passed an order of confiscation dated 30/08/2008 whereby total seized stock of Rs.2,74,560/- was ordered to be confiscated and as well as 5% of the truck value i.e. Rs.11,000/- was also ordered to be confiscated.

7) Against the said the order of confiscation dated 30/08/2008 passed by the District Collector, Bhavnagar, the respondent had preferred an appeal before the learned District Judge, Bhavnagar being Criminal Appeal No.64 of 2008 on 16/06/2008, which came to be allowed and order of confiscation dated 30/08/2008 passed by the District Collector. Bhavnagar is quashed and set aside. Hence, this revision preferred before this Court.

8) Learned APP for the applicant – State has submitted that the respondent failed to give proper explanation with regard to irregularities found from the spot; that as per Section 3 of the Solvent Refrinate and Slop (Purchase, Sale Stock and Prohibition of use in Automobiles) Order, 2000, licence to sell furnace oil requires to be obtained because the furnace oil is included in the list of schedule in Solvent Order, 2000. The respondent was going to deliver 12000 liters of FA Residual oil in the tanker without having any licence to sell the same and even as per the report of the FSL the said stock of furnace oil was found to be mixed with water. It is also submitted that if the address mentioned in the bill is changed, then the new

address ought to have been stamped in the said bill and thereafter only the business transaction can be done. Even during the period from 01/10/2006 to 30/06/2007 no such sale transaction was mentioned before the Sales Tax Department. In-fact, upon sales transaction on the next day the necessary sales tax is required to be deposited before the authority. However, by not doing so and by mentioning wrong address in the bill, it has been found that respondent was doing irregularities in the business; that the purchased goods were not shown in the stock register and therefore presumption ought to have been drawn that without issuing bill the respondent were selling the goods and thereby committed breach of Section 8 of the Essential Commodities Act. It is also submitted that light diesel and furnace oil are essential commodity and with a view to have the smooth and easy circulation of the said article, the activity of such a nature ought to have been curbed. The respondent agency had not maintained the stock registers, which were selling by it and thereby committed breach of the Essential Commodities Act, 1977. In such submissions, learned APP for the State has prayed to allow the revision application and quashed the order of learned Addl. Sessions Judge.

9) Perusing the order passed by the Collector, it appears that the respondent was engaged in the business of selling of solvents item and on 24/06/2007 the tanker bearing Registration No.GJ-2X-1115 containing FA Residual Oil 12000 liters was to be delivered to S K Impex Firm, Mamsa, Bhavnagar and on 25/06/2007 the Police Sub Inspector, LCB, Bhavnagar carried out the checking and did not find satisfactory reply from the driver and cleaner and the same was produced before the Court and thereafter learned Magistrate, Ghogha passed an order on 29/12/2007 to release the said truck. However, the Mamlatdar carried out the checking of the truck and stock in the truck and found with certain irregularities. However, no

proper explanation in this regard was given by the respondent.

10) After examining the records, the learned Additional Sessions Judge found that there was no proper evidence of adulteration. There was no proof that samples of the seized goods were taken correctly in the presence of the respondent or that they were properly sent for laboratory testing. Normally, samples should be divided into three parts, two samples kept by the authority for testing and one should be given to the respondent so that they can request re-testing if needed. Since the respondent was not given this opportunity, the test report cannot be relied upon. Any order based on such a report may be unjust and perverse and can be set aside. The learned Addl. Sessions Court Judge also noted that the respondent was not given a fair opportunity to defend himself, which goes against the principles of natural justice. There is no evidence showing that the respondent was involved in black marketing in the past or that any such action was taken against him. The respondent also provided reasonable explanations about where the goods were purchased and where they were supplied. Additionally, there is no allegation that the respondent was involved in black marketing of essential commodities.

11) Moreover, the failure to maintain a stock register or any other technical breach in absence of any allegations of black-marketing, does not warrant the seizure or confiscation of the goods. In support of this, reference is required to be made tn the decisions in **Karan Oil Industries V. District Collector, Jamnagar**, reported in **1996 (1) GLH 614, Patel Ambaram Dubebhai V. State of Gujarat,** reported in **1999 Cri.L.J 628, M.D. Agency V. State of Gujarat,** reported in **1997 (1) GLH 768 and N. Nagender Rao & Co. V. State of Andhra Pradesh,** reported in **AIR 1994 SC 2663**. Hence, in the absence of any allegations of black-marketing, confiscation of goods is not

permissible.

12) In view of the above, learned Additional Sessions Judge Bhavnagar, has not committed any error in allowing the appeal of the respondent and releasing the confiscated goods to the respondent vide order dated 05.10.2011 in Criminal Appeal No.64 of 2008. Therefore, present revision application being meritless is **dismissed** accordingly.

(HASMUKH D. SUTHAR,J)

SUCHIT