

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14059 of 2020**

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M/S FORMATIVE TEX FAB**Versus****STATE OF GUJARAT & 3 other(s)**

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Appearance:**MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1****MR CHINTAN DAVE, AGP for the Respondent(s) No. 1,2,3,4**

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA**and****HONOURABLE MR. JUSTICE ILESH J. VORA****Date : 18/01/2021****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1 By this writ application under Article 226 of the Constitution of India, the writ applicant, a partnership firm through one of its partners, has prayed for the following reliefs:

“a) to declare the impugned order No.GSL/S.5(1)/S.83/B.14 dated 15.01.2018 issued by respondent No.2, as without authority of law and ultra vires the provisions of the Gujarat Goods and Services Tax Act.

b) To quash and set aside the impugned Form DRC 22 dated 24.01.2020 attaching the properties and DRC 22 dated 23.09.2020 attaching the bank accounts and fixed deposits, issued by the respondent no.4.

c) Pending admission, hearing and till final disposal of this petition, Your Lordships may be pleased to direct the respondents

(i) *To release the bank accounts provisionally attached by the respondent no.4, as in Annexure L;*

(ii) *Not to take any coercive action against the petitioner.*

d) To issue order(s), direction(s), writ(s), or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice.

e) To award costs of and incidental to this application be paid by the respondents.”

2 It appears from the materials on record that this is a third round of litigation. Mr. Chintan Dave, the learned A.G.P. appearing for the State respondent, on an advanced copy served to him of the writ application, invited the attention of this Court to the two orders passed by a Coordinate Bench dated 20th August 2020 and 16th September 2020 respectively. These two orders are annexed at page : 26 (Annexure : A) and page : 30 (Annexure : B) respectively to this writ application.

3 We have heard Mr. Poddar, the learned counsel appearing for the writ applicant and Mr. Chintan Dave, the learned A.G.P. appearing for the State respondent.

4 It appears that the liability to the tune of Rs.1,67,74,868/- is sought to be fastened on the writ applicant towards tax under the provisions of the Act, 2017. The matter appears to be at the stage of Section 74 of the Act, 2017. The Assistant Commissioner of State Tax, Surat thought fit to pass two orders in Form GST DRC – 22. The first order dated 24th July 2020 is with respect to the provisional attachment of the immovable properties under Section 83 of the Act and the second order passed in Form GST DRC – 22 dated 23rd September 2020 is with respect to the provisional attachment of the cash credit account of the writ applicant maintained with the Kotak Bank at Surat. The summary of

the properties provisionally attached is as under:

Sr. No.	Property details	Type	Owner	Value
1	B-2/28, Hojiwala Industrial Estate, Sachin, Surat	Factory premises	M/s. Formative Tex Fab	Rs.6.5 Cr.
2	M/81, Someshwara Enclave, Vesu, Surat	Residential premises	1. Ratan Lal Saraf 2. Lata Saraf	Rs.5 Cr.
3	Kotak Bank – A/c – 51001108425	Current Account	M/s Formative Tex fab	Rs.28,280.56
4	Kotak Bank – A/c – 510044021166	Cash Credit Account		Rs.5,64,455.36
5	Kotak Bank – A/c – 510092128439	Fixed deposit		Rs.2,49,367.54
6	Kotak Bank – A/c – 510092128370	Fixed deposit		Rs.4,20,012.56
7	Kotak Bank – A/c – 510092128261	Fixed deposit		Rs.1,11,112.88
8	Kotak Bank – A/c – 510092127982	Fixed deposit	M/s Formative Tex fab	Rs.3,00,972.50
9	Axis Bank – A/c – 9150200087501	Current Account		Rs.13,855.06

5 Mr. Poddar, the learned counsel pointed out that the order of provisional attachment is specifically confined to the cash credit account only and not to the other accounts including the fixed deposits referred to above in the chart. He submits that as the PAN Card number is common, no sooner the authority concerned instructed the bank to provisionally attached the cash credit account, then the Bank, on its own, freezed all other accounts. His principal argument is that even otherwise, the cash credit account cannot be attached provisionally by virtue of power under Section 83 of the Act.

6 We are of the view that the provisional attachment of the cash credit account bearing No.510044021166 maintained with the Kotak Bank is not sustainable in law. The law in this regard is no longer *res integra*. In such

circumstances, we quash and set aside the order of provisional attachment dated 23rd September 2020 passed in the Form GST DRC – 22 annexed at page : 51A of the writ application. So far as the other reliefs prayed for in the writ application are concerned, those are not pressed by Mr. Poddar.

7 With the above, this writ application stands disposed of.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

CHANDRESH

