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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 18320 of 2020

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IDRISH YUSUFBHAI MALVASI

Versus

STATE OF GUJARAT

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Appearance:

MR A A ZABUAWALA(6823) for the Applicant(s) No. 1

MR HASIT DAVE(1321) for the Applicant(s) No. 1

MR ANKIT SHAH for the Respondent(s) No. 2

MR PRANAV TRIVEDI, ADDL. PUBLIC PROSECUTOR(2) for the
Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE GITA GOPI**

Date : 10/12/2020

ORAL ORDER

RULE. Mr. Pranav Trivedi, learned Additional Public Prosecutor, waives service of notice of rule on behalf of the respondent State.

1. This application has been filed under section 439 of the Code of Criminal Procedure for regular bail in connection with the order dated 29.10.2020 passed by the respondent No.2, Superintendent (Prev.), Central GST & C. Excise, Vadodara-II in File No. GEXCOM/AE/INV/GST/559/2020 for offences punishable under sections 132(1)(a) of the Central Goods and Services Tax Act, 2017.

2. Mr. Hasit Dave, learned advocate appearing with Mr. A.A. Zabuawala, learned advocate for the applicant, submitted that the main allegation against the applicant is of wrongfully availing

tax exemption by mis-applying and mis-interpreting the exemption notifications issued by the Department by actually using the brand name of the company – M/s. Mishkat Agro Industries Pvt. Ltd., of which the applicant is the Managing Director, on the products and thereby, making them liable to GST. It is also alleged against the applicant that he has willfully suppressed facts so as to avail the benefit of exemption of zero rate / exempted supplies and has, thereby, evaded huge amount of GST by wrongfully invoking the benefit of Notification No.2/2017, which could not have been availed of in view of Notification No.1/2017-CT dated 28.06.2017, as amended by Notification No.27/2017-CT dated 22.09 2017.

2.1 It is contended on behalf of the applicant that the applicant had pointed out to the Department that the name of the company has been wrongly shown as a brand name and had informed the Department vide communication dated 17.06.2020 that it has decided to forego its rights over the brand name. The product manufactured and processed by the applicant are covered as exempted goods in the notification of the Department. It is further contended that the issue in question is a fiscal matter and has to be adjudicated upon by the Department, for which the jail custody of the applicant is not warranted but in spite of that the applicant has deposited Rs.75 Lacs during the course of investigation. Further, the applicant has also not availed the benefit of Input Tax Credit. If at all the applicant has to pay any penalty, it could be done after proper adjudication. It was, accordingly, urged that the present application may be allowed and the applicant herein may be released on regular bail.

3. Mr. Ankit Shah, learned standing counsel appearing for the respondent Department, submitted that the applicant had registered his trademark, which came out during the inspection at the Trademark Registry and since it was found to be a deliberate act of evasion of tax, the applicant was arrested. It was, therefore, prayed that no discretion may be exercised in favour of the applicant.

4. Heard learned advocates on both the sides and perused the material on record. It appears that the applicant has taken benefit of the Notification, after intimating the Department vide communication dated 22.09.2017, which was acknowledged by the Department on 17.06.2020. It also appears that the returns were filed, which were also audited. Whether or not the registered trademark has been foregone and whether or not the applicant has misled the authority would be a matter adjudication. The applicant is reported to have deposited a sum of Rs.75 Lacs during the course of investigation. Considering the facts and circumstances of the case, this Court finds this to be a fit case where discretion could be exercised in favour of the applicant.

5. Hence, the present application is allowed. The applicant is ordered to be released on regular bail in connection with the order dated 29.10.2020 passed by the respondent No.2, Superintendent (Prev.), Central GST & C. Excise, Vadodara-II in File No. GEXCOM/AE/INV/GST/559/2020 on executing a personal bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety of the like amount to the satisfaction of the trial

Court and subject to the conditions that he shall;

- [a] not take undue advantage of liberty or misuse liberty;
- [b] not act in a manner injurious to the interest of the prosecution;
- [c] surrender passport, if any, to the lower court within a week;
- [d] not leave India without prior permission of the concerned trial court;
- [e] furnish the present address of residence to the Investigating Officer and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of the concerned trial court;

6. The authorities shall adhere to its own Circular relating to COVID-19 and, thereafter, will release the applicant only if he is not required in connection with any other offence for the time being. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Bail bond to be executed before the lower Court having jurisdiction to try the case.

7. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

(GITA GOPI,J)

DIPTI PATEL