

## Gujarat HC grants regular bail to assessee arrested for offences punishable under Section 132(1)(a) of the CGST Act

The Hon'ble Gujarat High Court, in *Idrish Yusufbhai Malvasi v. State of Gujarat and Ors. [R/Criminal Misc. Application No. 18320 of 2020 decided on December 10, 2020]* grants regular bail to the Managing Director of M/s. Mishkat Agro Industries Pvt. Ltd., who was arrested mainly on the allegations 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 and for willfully suppressing the facts.

### Facts:-

Idrish Yusufbhai Malvasi ("**Applicant/Assessee**") is the Managing Director of M/s. Mishkat Agro Industries Pvt. Ltd. ("**the Company**"), who was arrested for offences punishable under Section 132(1)(a) of the Central Goods and Services Tax Act, 2017 ("**CGST Act**"), vide order dated October 29, 2020, passed by the Superintendent (Prev.), Central GST & C. Excise ("**Respondent No.2**"), with the main allegations 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, on the products and thereby, making them liable to GST. It is also alleged that the Applicant 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-Central Tax (Rate) dated June 28, 2017**, which could not have been availed of in view of **Notification No. 1/2017-Central Tax dated June 28, 2017**, as amended by **Notification No.27/2017 -Central Tax dated September 22, 2017**.

The Applicant has filed regular bail in connection with the abovementioned order passed by the Respondent No. 2.

### Issue:-

Whether regular bail can be granted to the Assessee in connection for offences punishable under Sections 132(1)(a) of the CGST Act?

### Held:-

The Hon'ble Gujarat High Court, in *R/Criminal Misc. Application No. 18320 of 2020 decided on December 10, 2020* observed & held as under:

- The Applicant has taken benefit of **Notification No. 2/2017-Central Tax (Rate) dated June 28, 2017**, after intimating the Department vide communication dated September 22, 2017, which was acknowledged by the Department on June 17, 2020 to the effect that the name of the Company has been wrongly shown as a brand name and that the Company has decided to

forego its rights over the brand name. Thus, the product manufactured and processed by the Applicant are covered as exempted goods. Also, 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 for adjudication. The Applicant is reported to have deposited a sum of ₹ 75 Lacs during the course of investigation. Considering the facts and circumstances of the case, the Court found it to be a fit case where discretion could be exercised in favour of the Applicant.
- The Applicant is ordered to be released on regular bail in connection with the order dated October 29, 2020 passed by the Respondent No. 2, on executing a personal bond of ₹15,000/- 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 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;
- Directed the Authorities to 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.

**Relevant Provision:-**

**Section 132(1)(a) of the CGST Act:**

*“Punishment for certain offences-*

*132. (1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:-*

*(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;*

shall be punishable—

(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;

(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.”

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