

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 1350 of 2021

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MUNJAAL MANISHBHAI BHATT

Versus

UNION OF INDIA

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Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1
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 : 27/01/2021

ORAL ORDER

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

1. We have heard Mr. Manish Bhatt, the learned senior counsel assisted by Mr. Uchit Sheth, the learned counsel appearing for the writ applicant.

2. The subject matter of challenge in the present writ application is to the Entry No.3(if) of the Notification No.11/217 -Central Tax (Rate) dated 28th June, 2017 read with Para-2 of the said notification. It appears that the writ applicant has entered into an agreement with a developer, i.e., the fourth respondent herein with respect to a purchase of plot of land. The said agreement also encompasses construction of a bungalow on the said plot of land by the respondent No.4. It has been pointed out that separate consideration was agreed upon between the parties to the agreement, i.e. (i) sale of land and (ii) construction of bungalow on the land. The notification is

being challenged as the writ applicant is liable to pay tax at the rate of 9% CGST plus 9% SGST under the GST on the entire consideration payable for land as well as construction of bungalow after payment of 1/3rd value towards the land. It appears that the fourth respondent has raised an invoice on the writ applicant to collect an amount of Rs.42 Lakh towards the tax. The amendment is that because of the impugned notification, the entire consideration towards the sale of land has not been excluded for the purpose of computing the tax liability under the GST Act. In other words, only 1/3rd of the total consideration has been deemed to be the value of the land as per para-2 of the impugned notification. The learned senior counsel has argued that the impugned entry referred to above in the notification is ultra vires section 7(2) of the GST read with Entry No.5 of the Schedule-III to the GST Act. It is also argued that the deeming fiction introduced under para-2 of the impugned notification is contrary to Section 15 of the GST Act.

3. Let notice be issued to the respondents, returnable on 10th February, 2021.

4. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the writ applicant has been able to make out a strong prima facie case to have an interim order in his favour in terms of para-27(F) of the writ application. We, accordingly, grant such relief. We permit the writ applicant to deposit the amount of tax as raised under the invoice without prejudice to his rights and contentions as raised in this writ application.

5. Mr. Sheth, the advocate on record, shall furnish one set of the entire paper-book to Mr. Devang Vyas, the learned Addl. Solicitor General of India at the earliest so that he can obtain necessary instructions in the matter by the next date of hearing.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

Vahid

