

dik

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1273 OF 2018

- | | | |
|-------------------------------------|---|---------------|
| 1) Dipak Logistics and Forwarders |] | |
| Kharghar Navi Mumbai Dist.Thane |] | |
| through its partner Dipak Ghadge |] | |
| | | |
| 2) Shiv Enterprise, |] | |
| through its representative Sunny |] | |
| Natwarbhai Gajera having its office |] | |
| address at Survey No.335/1, |] | |
| Surthwad goan Taluka Chikhali, |] | |
| District Valsad, State Gujarat |] | ..Petitioners |

Versus

- | | | |
|--|---|---------------|
| 1) The State of Maharashtra |] | |
| | | |
| 2) The Collector, Palghar, Parshwanath |] | |
| 9, Bidco Naka, Taluka Palghar |] | |
| District Palghar 401 404 |] | |
| | | |
| 3) The Tahasildar Dahanu |] | |
| Dahanu Fort, Taluka Dahanu, |] | |
| Dist:- Palghar 401 601 |] | ..Respondents |

WITH

WRIT PETITION NO. 1274 OF 2018

- | | | |
|-------------------------------------|---|---------------|
| 1) Dipak Logistics and Forwarders |] | |
| Kharghar Navi Mumbai Dist.Thane |] | |
| through its partner Dipak Ghadge |] | |
| | | |
| 2) Shiv Enterprise, |] | |
| through its representative Sunny |] | |
| Natwarbhai Gajera having its office |] | |
| address at Survey No.335/1, |] | |
| Surthwad goan Taluka Chikhali, |] | |
| District Valsad, State Gujarat |] | ..Petitioners |

Versus

- | | | |
|----|-------------------------------------|----------------|
| 1) | The State of Maharashtra |] |
| 2) | The Collector, Palghar, Parshwanath |] |
| | 9, Bidco Naka, Taluka Palghar |] |
| | District Palghar 401 404 |] |
| 3) | The Tahasildar Dahanu |] |
| | Dahanu Fort, Taluka Dahanu, |] |
| | Dist:- Palghar 401 601 |]..Respondents |

.....

Mr Nitin Gangal for the Petitioners in both Petitions

Mr S.L.Babar a/w N.C.Walimbe AGP for the Respondents/ State
in both the Petitions.

.....

**CORAM : R.M.BORDE &
R.G.KETKAR, JJ.
FEBRUARY 06, 2018.**

ORAL JUDGMENT (Per R.M.Borde J.) :

1 Heard.

2 **Rule.** Rule made returnable forthwith. By consent of
parties both the Petitions are taken up for final disposal at the
admission stage.

3 The Petitioners are objecting to the instructions
issued by Respondent No.2 - The Collector, Palghar prohibiting

transportation of Ready mix plaster from Gujarat state to the State of Maharashtra. While issuing the instructions, reliance is placed on the notification issued by the State of Gujarat on 11th June, 2010. The notification is applicable in case of transportation of sand and does not cover the product Ready mix plaster. The trucks belonging to the Petitioners were apprehended by Respondent No.3 at Dahanu alleging that the material transported in the trucks is sand and since there is prohibition for illegal transportation of sand, the vehicles are liable to be attached along with the material. The revenue authorities have relied upon instructions issued by Collector Palghar for directing imposition of penalty, apart from amount of royalty on account of illegal transportation of minor minerals in the State. The Petitioners are directed to pay penalty of Rs.2,99,400/-. According to the Petitioners the material being transported is Ready mix plaster and one of the component of the final product is sand. There is no denial that the Ready mix plaster contains fly ash and sand. The component, processed sand is to the extent of 88 % whereas it contains about 11 to 12 % of the fly ash. The Petitioners contend that the final product transported in the vehicle belonging to the Petitioners, cannot be

branded as sand, however it is processed final product, Ready Mix Plaster. It is also further contended that the Petitioners have paid Goods and Service Tax (for short “**GST**”) on the final product to the extent of 18 %. According to the Petitioners, so far as minor mineral, sand, is concerned, it does not attract GST. The regulations governing transportation of sand in the State of Maharashtra are required to be adhered to by transporter however in the instant case the products being exported from the State of Gujarat is not a minor mineral (sand) but is the final product, Ready mix plaster which attracts payment of GST. The policy applicable in respect of the payment of royalty and the amount of penalty as applicable in case of minor minerals (sand) cannot be made applicable to for the final product, i.e. Ready mix plaster.

4 Apart from this the Petitioners contend that the circular issued by the Collector, Palghar, refers to the notification issued by the State of Gujarat on 11th June, 2010, in purported exercise of powers U/s 15 read with Section 23-C of the Mines & Minerals (Development and Regulation) Act, 1957 to further amend Gujrat Minor Mineral (Amendment) Rules,

2010 so as to insert Rule 44-BB. Rule 44-BB has been quashed by Gujarat High Court, hence notification dated 11.6.2010 also does not survive and shall be deemed to have been quashed.

5 Learned advocate appearing for the Petitioners has invited our attention to the decision of the Division Bench of Gujarat High Court in the matter of **Jayeshbhai Kanjibhai Kalathiya Vs. State of Gujarat through the Principal Secretary & 2 Ors. in Special Civil Application Nos. 7321 of 2010 and 6204 of 2010** decided on 19th October, 2010. The Petitioners before the Gujarat High Court were supplying Ready Mix Plaster to the builders of the State of Maharashtra and were also paying Value Added Tax (for short “VAT”) as well as GST. They used to process the sand by way of washing, cleaning and mixing it with fly-ash to convert it into final product and sell it in 50 kg bags under a brand name. It is contended that after processing sand and mixing with fly-ash and after packing, the sand gets converted into a final product which attracts levy of GST. According to the State of Gujarat, the spectrography analysis and chemical analysis of the product clearly suggests a black coloured sand. The State of Gujarat,

during pendency of the Petition introduced Rule 44-BB by way of amendment in Gujarat Minor and Mineral (Amendment) Rules, 1966 which reads thus:

“Rule 44-BB - No movement of sand shall be allowed beyond the border of the State. In case any vehicle is found transporting sand to the neighbouring State, even with authorized royalty pass or delivery challan, it shall be treated as violation of the Act and the Rules made thereunder and the penal provisions as specified therein shall be applicable.”

In exercise of the powers conferred under Section 15 of the Gujarat Minor and Mineral Rules, 1966 the Government of Gujarat, enacted and notified on 26.8.2010, the Gujarat Minor Mineral Concession Rules, 2010 so as to repeal the Gujarat Minor Mineral Rules, 1966. Rule 71 which is relevant is quoted as below:

“Rule 71. Prohibition to transport sand beyond border - No movement of sand shall be allowed beyond the border of the State. In case any vehicle is found transporting sand to the neighbouring State even with authorized royalty pass or delivery challan, it shall be treated as violation of the Act and the rules made thereunder and the penal provisions, except compounding, as specified therein shall be applicable.”

The notification dated 11.06.2010, Rule 44-BB of the Gujarat Minor and Mineral Rules, 1966 and the new Rule 71, was a matter of challenge before the Division Bench of Gujarat High

Court. It is needless to refer to the reasons recorded by the Division Bench of Gujarat High Court while drawing final conclusions, however suffice it to note that the Gujarat High Court proceeded to hold that Rule 44-BB of the Gujarat Minor Mineral Rules, 1966 and Rule 71 of the Gujarat Minor Mineral Concession Rules, 2010 as illegal and consequently the resolution dated 04.05.2010, also is rendered illegal. The High Court ultimately declared Rule 44-BB of the Gujarat Minor Mineral Rules, 1966 and Rule 71 of the Gujarat Minor Mineral Concession Rules, 2010 as well as notification dated 11.06.2010 to be null and void.

6 In the instant matter, the Collector, Palghar while issuing circular on 19.01.2018 has placed reliance on the notification issued by the State of Gujarat on 11.06.2010. The amended Rule 44-BB which was introduced by virtue of said notification has been set aside by the Gujarat High Court by the Judgment dated 19.10.2010 . In fact it was impermissible for the Collector to place reliance on the said notification which has lost its significance in view of quashment of Rule 44-BB. In the matter referred to above decided by the Gujarat High Court, the

challenge was in respect of rules and notification imposing restrictions on transportation of Ready Mix plaster. There does not appear to be any logical reason to overlook the judgment delivered by the Gujarat High Court. In the instant matter the Petitioners are alleged to have transported the Ready mix plaster from the State of Gujarat. It has not been brought to our notice that the transportation of Ready Mix plaster is prohibited in the State. The policy regulating transportation of sand cannot be made applicable to the transportation of Ready Mix plaster. The final product attracts 18 % GST which is said to have been paid by the Petitioners. The circular issued by the Collector, Palghar on 19.1.2018, as such, deserves to be quashed and set aside and the same is, accordingly, quashed and set aside. The consequent action based on the aforesaid circular also, therefore, deserves to be quashed.

7 It is the grievance of the Petitioners that though the vehicles were seized and taken to the Police Station, the Revenue authorities have not followed the procedure prescribed under sub-Section 8 of Section 48 of the Maharashtra Land Revenue Code, 1966 (for short "**the Act**"). Sub-Section 8(2) of

Section 48 of the Act provides that the machinery or equipment or means of transport, used for unauthorized extraction, removal, collection, replacement, picking up or disposal of minor minerals or transportation thereof, which is seized under sub-section (1), shall be produced before the Collector or such other officer not below the rank of Deputy Collector authorized by the Collector in this behalf, within a period of forty-eight hours of such seizure, who may release such seized machinery, equipment or means of transport on payment by the owner thereof of such penalty as may be prescribed and also on furnishing personal bond of an amount not exceeding the market value of the seized machinery, equipment or means of transport, stating therein that such seized machinery, equipment or means of transport shall not be used in future for unauthorized extraction, removal, collection, replacement, picking up or disposal of minor minerals and transportation of the same. It is noticed in most of the matters that the amended provisions of sub-section 8(2) of Section 48 of the Act has not been breached by the Revenue Officials. In fact it is mandatory for the Revenue Officials to produce attached vehicles before the Collector within a period of 48 hours. This seizure of vehicles, without verifying

whether the act alleged is an offence or violation of any of the regulations, and failing to produce it before prescribed authority to facilitate its release causes great prejudice and also financial loss to the owner. Apart from the harassment caused on account of illegal actions of the Revenue Officials in seizing vehicles and goods, there is failure to observe provisions of Section 48 (8)(2) of M.L.R.Code. In the instant matter it is noticed that the reliance has been placed by the Collector, Palghar on the notification issued by the State of Gujarat, for issuing illegal directions without verifying as to whether the same is operative even in that State leave apart its inapplicability in State of Maharashtra. The ill actions of the Respondents causes prejudice to the Petitioners. Apart from this, the mandate of Section 48-8(2) of the Act has also not been followed by the Revenue Officials. In the circumstances, while directing the release of the seized vehicles as well as the material attached, we direct the Respondent - State to deposit the costs of Rs.10,000/- in each Writ Petition, in this Court within a period of four weeks from today. The State Government shall have power to recover the amount required to be deposited in this Court from the erring officials. Rule is, accordingly, made absolute.

There shall be no order as to costs.

8 The Writ Petitions are disposed of accordingly.

(R.G.KETKAR, J.)

(R.M.BORDE, J.)