

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL REVISION APPLICATION NO. 392 of 2008****With****CRIMINAL REVISION APPLICATION NO. 393 of 2008****With****CRIMINAL REVISION APPLICATION NO. 394 of 2008****With****CRIMINAL REVISION APPLICATION NO. 395 of 2008****With****CRIMINAL REVISION APPLICATION NO. 396 of 2008****With****CRIMINAL REVISION APPLICATION NO. 397 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE JAYANT PATEL**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT &amp; 1....Applicant(s)

Versus

HASUMUKHBHAI KANTIBHAI DAVE PROP. OF SHRI RAM

TRADERS....Respondent(s)

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Appearance:

MS MOXA THAKKER, APP for the Applicant(s) No. 1 - 2

MR HARSHIT S TOLIA, ADVOCATE for the Respondent(s) No. 1

MR PARTH S TOLIA, ADVOCATE for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE JAYANT PATEL**

**Date : 28/03/2013**

**ORAL JUDGMENT**

- 1.As in all the matters, common questions arise for consideration, they are being considered simultaneously.
- 2.In all the matters, challenge in the Revision Petitions is against the order passed by the learned Sessions Judge in the respective Criminal Appeals, whereby the learned Sessions Judge has reduced the quantum of confiscation to the extent of 10% as against in majority of the cases, to the extent of 100% as was ordered by the District Magistrate/District Magistrate, save and except that in one case, it was 60% confiscation.
- 3.The relevant facts are that the search and seizure was made by the competent authority under **Solvent, Raffinate and Slop (Acquisition, Sale, Storage and Prevention of Use in Automobiles) Order, 2000 with the Amendment Order, 2001.**

Thereafter, the proceedings under Section 6A of the Essential Commodities Act (hereinafter referred to as 'the Act' for short) were initiated against concerned respondents in concerned petitions. The concerned respondents had appeared and thereafter, the District Magistrate/District Collector, in exercise of the power under Section 6A of the Act, has passed the order against the concerned respondents for forfeiture of the seized goods and the details thereof are as under:-

**(a)** In Criminal Revision Application No.392 of 2008 confiscation was to the extent of 100% of the seized goods;

**(b)** In Criminal Revision Application No.393 of 2008 confiscation was made of the goods worth Rs.16,65,207/-;

**(c)** In Criminal Revision Application No.394 of 2008 confiscation was made of the goods worth Rs.7,93,836/-;

**(d)** In Criminal Revision Application No.395 of 2008 confiscation was made of the goods worth Rs.15,38,775/-;

**(e)** In Criminal Revision Application No.396 of

2008 confiscation was made of the goods worth Rs.1,64,788/-;

(f) In Criminal Revision Application No.397 of 2008 confiscation was made of the goods worth Rs.1,11,600/-.

4. The concerned respondents in the respective petitions, being aggrieved by the order of the District Magistrate/District Collector for confiscation of the aforesaid goods in the respective cases, preferred appeals before the learned Sessions Judge. The learned Sessions Judge, in the said appeals preferred by the concerned respondents, after hearing both the sides, did not interfere with the decision of the District Collector for confiscation of the case on account of the alleged breach. However, the learned Sessions Judge reduced the quantum of confiscation to 10% of the seized goods in each of the cases. It is under these circumstances, the State has preferred the Revisions against the order passed by the learned Sessions Judge in the respective Revisions before this Court.

5. I have heard Ms.Moxa Thakker, learned APP for the Applicant State and Mr.Tolia, learned Counsel has

appeared on behalf of all the concerned respondents in all the matters.

6. The only aspect to be considered in the present group of matters is as to 'whether the learned Sessions Judge was justified in reducing the quantum of confiscation to the extent of 10% without recording any reasons or not ?' The perusal of the order passed by the learned Sessions Judge in the respective matter shows that the argument was raised on behalf of the appellants before the learned Sessions Judge that in one case where the goods seized was of Rs.1,24,24,820/-, but the District Collector had taken decision to confiscate 3% of the goods seized and, therefore, the confiscation be reduced to 3%.

7. It is true that the learned APP for the State left the matter to the Court for passing appropriate orders. However, the pertinent aspect is that the learned Sessions Judge, without recording any reasons as to why it would be just and proper to confiscate 10% of the goods seized, has taken decision to reduce the confiscation to 10%. As such, the order of the

learned Sessions Judge and more particularly the purpose of reduction of the quantum of confiscated goods can be termed as without recording any reasons whatsoever.

8. Mr. Tolia, learned Counsel for the respondents is not in a position to satisfy this Court as to whether any reasons have been recorded by the learned Sessions Judge for reduction of the confiscation from 100% to 10%. The learned Sessions Judge did not consider the aspect that in a case where confiscation was to the extent of 3% upon which the reliance is placed by the appellants before him, the State had preferred appeals and the appeals were pending. In any case, when the learned Sessions Judge had to interfere on the aspects of proportionality of the quantum of the goods to be confiscated, it was required for him to record reasons and thereafter only the discretion could be exercised. In absence of any satisfactory reasons recorded by the learned Sessions Judge, the order for reduction of the quantum of confiscated goods to the extent of 10% in each of the matters cannot be sustained.

9. Hence, the orders passed by the learned Sessions Judge deserve to be quashed and set aside and the matters deserve to be remanded to the learned Sessions Judge for examining the aspects on the question of quantum of the confiscation and to decide afresh after hearing both the sides, but with the observation that the learned Sessions Judge will record the reasons and thereafter will take appropriate decision in accordance with law.

10. In view of the aforesaid observations and discussion, the impugned order passed by the learned Sessions Judge in the respective appeals, which are subject matter in the concerned Revisions, is quashed and set aside with the direction that the concerned main Appeals shall stand restored to the learned Sessions Judge. The learned Sessions Judge shall examine the matter afresh on the question of quantum of confiscation of the case after giving opportunity of hearing to both the sides and shall pass appropriate orders in light of the observations made by this Court in the present judgement.

11. The Criminal Revision Applications are allowed to the aforesaid extent. Rule made

absolute accordingly.

12. As the matters are quite old, attempt shall be made by the learned Sessions Judge to decide the same as early as possible, preferably within a period of six months from the date of receipt of writ of this Court. It would also be open to either side to move the learned Sessions Judge for early hearing of the matter.

**(JAYANT PATEL, J.)**

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