



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16217 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

**and
HONOURABLE MR.JUSTICE D.N.RAY**

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Approved for Reporting	Yes	No
		✓
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VISWAAT CHEMICALS LIMITED & ANR.
Versus
SALES TAX OFFICER ,GHATAK & ANR.

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Appearance:
MS. DIMPLE K. GOHIL(7451) for the Petitioner(s) No. 1,2,3
MS SHRUNJAL SHAH, AGP for the Respondent(s) No. 1,2,3

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE D.N.RAY

Date : 27/03/2025

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Vishal Agrawal with
learned advocate Ms. Dimple K. Gohil for the
petitioners and learned Assistant Government



Pleader Ms. Shrunjal Shah for the respondent.

2. Rule returnable forthwith. Learned Assistant Government Pleader Ms. Shrunjal Shah waives service of notice of rule on behalf of the respondent State.

3. By this petition under Article 227 of the Constitution of India, the petitioners have prayed for quashing and setting aside the order-in-original dated 11.10.2023 as well as has challenged the validity and legality of the show cause notice dated 31.07.2023 issued by respondent no.1.

4. Brief facts of the case are that the petitioners are engaged in manufacture and sale of various speciality chemicals catering to industries such as agriculture, construction, cosmetics and personal



care, ink, leather, paint, paper, pharmaceutical and textile etc.

5. It is the case of the petitioners that intimation in Form GST ASMT-10 dated 20.09.2022 was issued in terms of Rule 99(1) of the Central/State Goods and Services Tax Rules, 2017 (For short “CGST Rules”) by respondent no.1 calling upon the petitioners to explain the discrepancies noticed in the returns filed by it.

6. Thereafter a show cause notice dated 31.07.2023 in Form DRC 01 was issued by respondent no.1 under section 73 of the Central/State Goods and Services Tax Act, 2017 (For short “the CGST Act”) seeking to recover the alleged excess ITC availed of Rs.18,66,606/- (IGST) along with applicable interest and penalty.



7. It is the case of the petitioners that show cause notice was not uploaded under View Notices/Orders tab on the GSTN portal where such notices were originally uploaded by the department and same was uploaded under the Additional Notices/Orders tab on the GST portal and therefore, the same escaped the attention of petitioners and the petitioners could not file reply.

8. It is the case of the petitioners that respondent no.1 without granting a personal hearing to the petitioners, issued the impugned ex-parte order-in-original dated 11.10.2023 which came to the knowledge of the petitioners on 19.06.2024 vide Form GST DRC 07 and confirmed the demand of tax of Rs.18,66,606/- (IGST) along with interest and penalty for the period from April, 2020 to



March, 2021 under section 73 of the CGST Act.

9. It is the case of the petitioners that petitioners became aware of the initiation of the impugned proceedings on 19.06.2024 when their bank account was attached as notified by the bankers and the petitioners were neither served physically or through email the impugned order-in-original and the petitioners were also not given any intimation about uploading of such order-in-original in the portal.

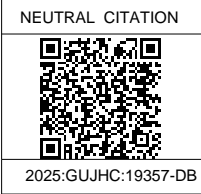
10. The petitioners therefore, filed appeal on 19.06.2024 against the order-in-original before respondent no.2, pursuant to which, personal hearing was granted to the petitioners on 30.07.2024 wherein the authorised representative of the petitioners Shri Srinivasan appeared before respondent no.2.



11. It is the case of the petitioners that during the course of personal hearing, respondent no.2 refused to hear the appeal on merits and directed the authorised representative to show proof of communication of the impugned order-in-original at which point of time the authorised representative explained that said order was never communicated to them until their bank account was attached. However, respondent no.2 passed the impugned order-in-original on the presumption that the order was served via email of a former employee which was available with the department and respondent no.2 refused to entertain the appeal filed by the petitioners holding that the appeal was filed beyond the maximum time limit provided under the CGST Act.



12. It is the case of the petitioners that email ID of former employee of the petitioners has been disabled by the petitioners since the said employee had resigned on 01.10.2020.
13. Being aggrieved by the impugned order, the petitioners has preferred the present petition.
14. Learned advocate Mr. Vishal Agrawal for the petitioners submitted that admittedly respondent no.1 without granting personal hearing has passed the impugned order-in-original dated 11.10.2023 ex parte which came to the knowledge of the petitioners on 19.06.2024 confirming the demand of Rs. 18,66,606/-.
15. It was further submitted that the petitioners could not file reply to the notice dated 31.07.2023



issued by the respondent authority as same was not reflected on GST portal in the notice section but it was uploaded under additional notice/order on the portal and therefore, the petitioners could not avail the opportunity of hearing granted by respondent no.1.

16. It was therefore, submitted that the petitioners could not file appeal under section 107 of the CGST Act within the prescribed time limit as the petitioners were not aware about the order dated 11.10.2023 passed by respondent no.1.

17. It was submitted by learned advocate Mr. Agrawal that the issue raised in the show cause notice only pertained to difference between Form GSTR 2A and Form GSTR 3B which requires conciliation and if an opportunity is given to the



petitioners, same will be reconciled.

18. On the other hand, learned Assistant Government Pleader Ms. Shrunjal Shah submitted that though enough opportunity was given to the petitioners, the petitioners have failed to avail the same. It was further submitted that as the petitioners have not availed the opportunity of hearing inspite of issuing reminder letters on 4.11.2022, 17.11.2022 and 23.11.2022, respondent no.1 had no option but to pass the impugned order-in-original.

19. It was further submitted that the petitioners have alternative efficacious remedy to prefer an appeal, however, the petitioners failed to file the appeal within the prescribed period of limitation and therefore, the appellate authority was justified to reject the appeal on the grounds of limitation.



20. Considering the submissions made by learned advocates for the respective parties, it is not in dispute that the impugned order-in-original is passed in violation of provisions of section 75(4) of the CGST Act as the respondent no.1 was required to grant an opportunity of hearing before passing an adverse order.

21. Therefore, as the impugned order-in-original is passed in violation of principles of natural justice, only on that ground same is hereby quashed and set aside and the matter is remanded back to the respondent authority to pass fresh de novo order after giving an opportunity of hearing to the petitioners to reconcile Form GSTR 2A with that of Form GSTR 3B for the period under consideration. Such exercise shall be completed



within a period of 12 weeks from the date of receipt of a copy of the order.

22. It is clarified that this Court has not gone into the merits of the matter and respondent no.1 shall pass fresh de novo order in accordance with law without being influenced by any observation made in this order after considering the reply to be filed by the petitioners and after providing an opportunity of hearing as required under section 75(4) of the CGST Act.

23. Petition is accordingly disposed of. Rule is made absolute to the aforesaid extent.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

RAGHUNATH R NAIR