NEUTRAL CITATION

2025:GUJHC:28018-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4864 of 2025

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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SIMPLEX INFRASTRUCTURES LIMITED
Versus
ASISTANT COMMISSIONER OF CGST, DIVISION VII, AHMEDABAD SOUTH & ORS.

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Appearance:
MR. ANKIT KARODIA, ADVOCATE WITH MR. PARTH S SHAH(8375) for the Petitioner(s) No. 1
MR. TRUPESH KATHIRIA, AGP for the Respondent(s) No. 3,4,5,6
MS HETAL G PATEL(11032) for the Respondent(s) No. 1,2

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

Date : 01/05/2025

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

1. Heard Mr.Ankit Karodia, learned Advocate with learned Advocate Mr. Parth S.Shah for the Petitioner; learned Assistant Government Pleader Mr.Trupesh Kathiria for the Respondent Nos. 3, 4, 5 and 6 and learned Advocate Ms. Hetal G. Patel for the Respondent Nos.1 and 2.

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2. Having regard to the controversy involved which is in narrow compass, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing.

3. Rule returnable forthwith. Learned Assistant Government Pleader Mr.Trupesh Kathiria waives service of notice of rule for the Respondent Nos.3, 4, 5 and 6 and learned Advocate Ms.Hetal G. Patel waives service of notice of rule for the Respondent Nos.1 and 2.

4. By this petition under Article 227 of the Constitution of India, the Petitioner has prayed for the following reliefs :-

> *"a. That Your Lordships may be pleased to issue writ of Certiorari or any other appropriate writ, direction or order for quashing and setting aside the Impugned Order dated 31.12.2024 along with summary of the order in form DRC 07 dated 03.01.2025, passed by the Assistant Commissioner of CGST, At Annexure 'I', Division VII, Ahmedabad South, being Respondent No.1 under Section 74 of the CGST Act, 2017;*
>
> *b. That Your Lordships may be pleased to issue writ of Certiorari or any other appropriate writ, direction or order for quashing and setting aside the show cause notice dated 04.08.2024 together with the summary in form DRC 01 dated 13.08.2024, issued by the Ld.*

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Assistant Commissioner of CGST, Division VII, Ahmedabad South, at Annexure-G being the Respondent No.1, as the same has been issued beyond the time limit prescribed u/s 74(2) read with section 74(10) of the CGST Act, 2017;

c. That Your Lordships may be pleased to issue writ of Mandamus or any other appropriate writ, direction or order for quashing and setting aside the entire proceedings initiated by the Ld. Assistant Commissioner of CGST, Division VII, Ahmedabad South, being the Respondent No.1, as being contrary to the provisions of section 6(2)(b) of the CGST Act, 2017 and thus without jurisdiction;

d. That your Lordship may be pleased to issue Rule Nisi in terms of prayers (a) to (c);

e. That your Lordship may be pleased to issue an order of injunction restraining the Respondent authorities from giving effect or further effect to the operation of the Impugned Order dated 31.12.2024 along with summary of the order in form DRC 07 dated 03.01.2025, passed by the Assistant Commissioner of CGST, Division VII, Ahmedabad South, AT Annexure-I being Respondent No.1 under Section 74 of the CGST Act, 2017, till the disposal of the present writ petition;

f. That your Lordship may be pleased to issue to grant ad-interim relief with respect to prayer under Para (a) to (e) above;

g. That your Lordship may be pleased to issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice.

h. That your Lordship may be pleased to issue to award Costs of and incidental to this application be paid by the Respondents;"

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5. The brief facts of the case are as under:-

5.1 The Petitioner-Company is registered under the provision of the Central/State Goods & Service Act, 2017 (For short "GST Act"). The Petitioner is engaged in the business of provision of works contract services.

5.2 It is case of the Petitioner that during the course of the business and providing outward work contract service, the Petitioner purchased various goods and services from various suppliers and also made payments on the amount of taxable supplies. The Petitioner filed regular return of income under the provisions of the GST Act after claiming the Input Tax Credit (ITC) on the supplier of goods purchased by the Petitioner during the course of business of work contract service.

5.3 The Petitioner has challenged the Order-in-Original dated 31.12.2024 passed by the Respondent-authority i.e. Respondent No.1–Assistant Commissioner, CGST, pursuant to the show cause notice. After issuing show cause notice on 04.08.2024, pursuant to the investigation initiated against the Petitioner by the Officers of the

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Preventive Section, CGST, Ahmedabad South on the basis of reference received from the Central Investigation Bureau, Patna, Bihar, wherein, a list of such taxpayers who have availed ineligible ITC from non-existent taxpayers had been shared.

5.4 On the basis of such information, the show cause notice dated 04.08.2024 was issued to the Petitioner alleging that the Petitioner availed the ineligible ITC to the tune of Rs.7,04,333/- from a fake/non-existent taxpayer namely M/s. D.K.Construction because on the basis of the information in Form GSTR-2A of the petitioner, it had come to the notice that apart from such non-existent tax payer, the Petitioner has also availed the ineligible ITC from about 62 other suppliers whose GSTINs were ab-initio cancelled and therefore, there is violation of provision of Section 16(2)(a) and Section 16(2)(b) and Section 16(2)(c) of the GST Act. It was alleged that the Petitioner had availed the ineligible ITC to the tune of Rs.1,18,28,213/- and therefore, the such show cause notice was issued invoking Sections 50 and 74 of the GST Act read with Section 20 of the IGST Act, 2017. The Petitioner was called upon to

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show cause as to why :-

"i.) The amount of Rs. 9,79,429/- (Rupees Nine Lakh Seventy Nine Thousand Four Hundred Twenty Nine Only) being IGST amount; availed as input tax credit fraudulently (without receipt of goods) by them should not be demanded and recovered from them under the provisions of section 74(1) of the Central (1ST Act, 2017 read with Section 20 of IGST Act, 2017;

ii) the amount of Rs. 54,24,392/- (Rupees Fifty four Lakh Twenty Four Thousand Three Hundred Ninety Two Only) being CGST amount availed as input tax credit fraudulently (without receipt of goods) by them should not be demanded and recovered from them under the provisions of section 74(1) of the Central GST Act, 2017;

iii) the amount of Rs. 54,24,392/- (Rupees Fifty four Lakh Twenty Four Thousand Three Hundred Ninety Two Only) being SGST amount availed as input tax credit fraudulently [without receipt of goods) by them should not be demanded and recovered from them under the provisions of section 74(1) of the Gujarat SGST Act, 2017;

iv) Interest should not be demanded on the IGST amount mentioned at Sr. No. (i) above, under Section 50 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017;

v) Interest should not be demanded on the CGST amount mentioned at Sr. No. (ii) above, under Section 50 of the CGST Act, 2017;

vi) Interest should not be demanded on the SGST amount mentioned at Sr. No. (iii) above, under Section 50 of the Gujarat SGST Act, 2017;

vii) Penalty should not be imposed upon them on the IGST amount demanded at Sr. No. (i) above, under Section 74 of the CGST Act, 2017 read with Section 20 of IGST Act, 2017;

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viii) Penalty should not be imposed upon them on the CGST amount demanded at Sr. No. (ii) above, under Section 74 of the CGST Act, 2017;

ix) Penalty should not be imposed upon them on the SGST amount demanded at Sr. No. (iii) above, under Section 74 of the Gujarat SGST Act, 2017. ”

5.5 In response to the show cause notice, the Petitioner filed the detailed reply on 12.09.2024 raising the contention that for the same cause, the State GST Department has already conducted the audit and has already passed an Order-in-Original for the period 2017-18 and the Petitioner has preferred an appeal before the Commissioner (Appeals), whereas, for the period 2018-19 and 2019-20, the show cause notices have been issued for availing ITC by the Petitioner and adjudication was under process.

5.6 It was further contended that the Respondent No.1 could not have invoked the provision of Section 74 of the Act for the extended period and more particularly for the period 2017-18, the show cause notice was time barred as the time period which is provided as per Section 74 of the Act would expire on 05.08.2024 whereas, the show cause notice was dated 13.08.2024. It was also contended that as

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per the Manual, the show cause notice is not matching with the tax period as per the system generated DRC-01 and the tax quantification as per the Manual is not matching with tax quantification as per the notice. It was further pointed out that the Respondent has no jurisdiction to issue the show cause notice as the State Tax Authorities have already commenced the assessment proceedings under Section 73/74 of the Act for the same period. It was also contended that the GST audit was completed till Financial Year 2020-21 and therefore, the Respondent No.1 could not have assumed the jurisdiction to issue the show cause notice for the same period for which the audit was conducted by the State Tax Authorities. With regard to the transaction with M/s. D.K.Construction it was contended that vide the letter dated 01.07.2024, the Petitioner submitted the work orders issued by M/s. D.K.Costruction along with the copies of the invoices as raised upon the said party in view of the services rendered and the same was accompanied by the summarized details with respect to the invoices raised by M/s. D.K.Construction. It was therefore submitted that the information provided by the Central Bureau of Investigation

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to the Respondent No.1 is incorrect as all the details are disclosed by the Petitioner in the returns filed under the provision of the GST Act, 2017.

5.7 The Petitioner also contended that the Petitioner has filed the returns of income as per the provisions of the GST Act and therefore, the same are required to be assessed on the basis of the returns in the documents furnished. The Petitioner also filed various documents and statements as stated in the reply.

5.8 The Respondent No.1 after considering the reply of the Petitioner and after providing an ample opportunity of hearing on 14.10.2024, 15.11.2024 and 12.12.2024 to which neither the Petitioner nor the authorized representative appeared, passed the impugned Order-in-Original by dealing with the contentions.

5.9 Learned advocate Mr.Parth Shah for the Petitioner submitted that the Respondent No.1 has not considered any of the submissions and contentions raised by the Petitioner in the impugned order and has merely reproduced the provision of the Act and recorded the

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conclusions only by observing that there was no actual inward supply and there was no genuine taxable invoices for which the Petitioner has availed the ITC and passed the impugned order on the basis of the show cause alleged additions referred in the show cause notice.

5.10. It was submitted that the Respondent-Authority could not have assumed the jurisdiction when the State Tax Authorities have already conducted audit for the same period and initiated the assessment proceedings for the year 2017-18 and already passed an Order-in-Original against which Petitioner has preferred an appeal before the Appellate Authority.

5.11 In support of his submissions, the reliance was placed on the following decisions :-

1. Bipin Kumar Agrawal Vs. Commissioner CGST and Central Excise reported in (2025) 28 Centax 143 (Ori.).

2. Interim order passed by this Court in the case of Kamleshkumar Shyamlal Shah Vs. Assistant Commissioner, Ghatak.

3 The decision of the Hon'ble Delhi High Court in case of Metalax Industries Vs. GST Officer Ward 66 reported in (2025) 26 Centax 404 (Del.)

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4. The decision of Hon'ble Gauhati High Court in the case of Kanco Tea and Industries Ltd. Vs. Union of India reported in (2024) 23 Centax 37 (Gau.).

5. The decision of the Hon'ble Delhi High Court in the case of DLF Home Developers Ltd. Vs. Sales Tax Officer Class II Avato, Delhi reported in (2024) 24 Centax 169(Del.)

6. The decision of the Karnataka High Court at Bengaluru in the case of Toyota Logistics Kishor India Pvt. Ltd. Vs. Union of India reported in (2024) 23 Centax 403 (Kar.).

7. The decision of the High Court at Calcutta in the case of Baazar Style Retail Ltd. Vs. Deputy Commissioner of State Tax reported in (2024) 22 Centax 99 (Cal.)

8. The decision of the Hon'ble High Court at Calcutta in the case of R.P.Buildcon Pvt. Ltd. Vs. Superintendent, CGST & Central Excise reported in (2022) 1 Centax 284 (Cal.)

5.12 Learned advocate Mr. Shah for the Petitioner has also referred to and relied upon the Notification No.6/2020 dated 03.02.2020, prescribing the due date of furnishing the return under Section 44 of the GST Act read with Rule 18 of the GST Rule for the Financial Year 2017-18. It was pointed out from the said Notification that so far as the Gujarat is concerned, the due date prescribed is **05.02.2020** and therefore, the Petitioner was eligible to file the return up to 05.08.2020 and as per the provision of Section 74 of the Act, extended time of five years is provided therefore, the last date of

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issuance of the notice could be 05.08.2024. It was submitted that the impugned show cause notice, though dated 04.08.2024 which was issued on 13.08.2024, which is not in dispute as the DRC-01 is dated 13.08.2024. It was submitted that though the summary of detailed show cause notice is of 04.08.2024, the same was uploaded along with FORM GST DRC 01 dated 13.08.2024 for the period atleast from 2017-18, notice would be barred by the limitation.

5.13 The reliance was also placed upon the Instruction No. 05/2023-GST dated 13.12.2023 regarding the invocation of the extended period which reads as under :-

> *"3.2 In this regard, section 74 (1) of CGST Act reads as follows:*
>
> > *"(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized* ***by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, "***
>
> *3.3 From the perusal of wording of section 74(1) of CGST Act, it is evident that section 74(1) can be invoked only in cases where there is a fraud or willful mis-statement or suppression of facts to evade tax on the part of the said taxpayer. Section 74(1) cannot be invoked merely on account of non-payment of GST, without*

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specific element of fraud or willful mis-statement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or willful mis-statement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice."

5.14 Referring to the above instructions, it was submitted that the Respondent No.1 could not have invoked the provisions of Section 74(1) merely on account of non-payment of GST, without specific element of fraud or willful mis-statement or suppression of facts to evade tax. It was submitted that as per the impugned show cause notice as well as the Order-in-Original, the Respondent No.1 has failed to point out any element of fraud or willful mis-statement or suppression of facts to evade tax by the Petitioner and therefore, the Respondent No.1 could not have assumed the jurisdiction to issue the impugned show cause notice and passed the Order-in-Original under Section 74 of the Act by passing the impugned common order which was uploaded for each year from July, 2017-2018, 2018-19, 2019-20 separately on 03.01.2025.

5.15 It was therefore submitted that the Respondent No.1 by the

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impugned common order as without considering the reply filed by the Petitioner is liable to be quashed and set aside.

6. Having heard learned advocate appearing for the Petitioner and on perusal of the impugned order, it appears that so far as the issue of cross empowerment of the State Tax Authorities and the Central Tax Authorities are concerned, the Respondent has considered the issue in the impugned order by referring to Section 6 of the Gujarat Goods and Services Tax Act, 2017 which reads as under :-

> ***"6. Authorisation of officers of central tax as proper officer in certain circumstances.***
>
> ***(1)*** *Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.*
>
> ***(2)*** *Subject to the conditions specified in the notification issued under sub-section (1)-*
>
> ***(a)*** *where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;*
>
> ***(b)*** *where a proper officer under the Central Goods and*

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Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) *Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act."*

7. So far as the issues which are covered by the audit conducted by the State Tax Authorities are concerned and the issue which are considered in the impugned Order-in-Original are disputed questions of facts as there is no matching of the issue which was considered by the State Tax Authorities on perusal of the Order-in-Original passed for 2017-18 which is placed on record in the impugned Order-in-Original dated 31.12.2024. Therefore, it is not possible for this Court to consider the contentions of the Petitioner at this stage, the Petitioner wishes that the same can be considered by preferring an appeal challenging the impugned order under Section 107 of the GST Act. With regard to the other contentions of the Petitioner on the aspect of receipt of the goods as alleged in the impugned order no material is placed on record and therefore, this Court is not in a position to consider the same in detail and give a finding as if this

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Court is an Appellate Authority by considering the contention on merits. So far as the aspect of invocation of jurisdiction of the extended period is concerned, it is again the disputed question because the impugned order is dated 04.12.2024, whereas, the same is uploaded on 13.08.2024 and therefore, whether the said order can be said which is signed on 04.08.2024 is to be considered within the period of limitation as alleged by the Petitioner or not is also matter of examining the record. Therefore, in the facts of the case, without going into the merits of the matter and without referring to the decisions on merits as canvassed by learned advocate for the petitioner, the petition is not entertained at this stage with a liberty to the Petitioner to challenge the impugned Order-in-Original before the Appellate Authority as provided under Section 107 of the GST Act. We have relied upon the following observations in the case of **The Assistant Commissioner of State Tax & Others Vs. M/s. Commercial Steel Limited** reported in **2021(9) TMI 480 SC** as under:-

> *"11. The Respondent had a statutory remedy under section 107. Instead of availing of the remedy, the Respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition*

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under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

(i) a breach of fundamental rights;

(ii) a violation of the principles of natural justice;

(iii) an excess of jurisdiction; or

(iv) a challenge to the vires of the statute or delegated legislation.

12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the Respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.

13. For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the Respondent shall stand dismissed. However, this shall not preclude the Respondent from taking recourse to appropriate remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case."

8. In view of the above dictum of law, this petition is disposed of with the aforesaid liberty. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

BINA SHAH

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