NEUTRAL CITATION

2025:GUJHC:27797-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4910 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 5176 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 5541 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 5837 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE P. M. RAVAL

==========

Approved for Reporting	Yes	No

==========

M/S NRM METALS (INDIA) PRIVATE LIMITED & ANR.
Versus
UNION OF INDIA & ORS.

==========

Appearance:
MR ABHISHEKKUMAR C MALVI(9941) for the Petitioner(s) No. 1,2
MR MAULIK VAKHARIYA(6628) for the Petitioner(s) No. 1,2
GOVERNMENT PLEADER for the Respondent(s) No. 2,3,4,5
MR PARAM SHAH for the Respondent(s) No. 1
NOTICE NOT RECD BACK for the Respondent(s) No. 6

==========

CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 09/05/2025
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Maulik Vakharia

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

for the petitioners, learned Assistant Government Pleader Ms. Puja Ashar, learned advocate Mr. Param Shah, learned advocate Mr. C.R.Abhichandani, learned advocate Mr. Anip Gandhi with learned advocate Ms. Isha Mendapara for the respective respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the search authorization issued by respondent No.5 with consequential and incidental relief and further also prayed for quashing and setting aside the attachment orders at Annexure D and blocking of ITC as passed by the respondents with consequential and incidental reliefs.

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

3. As the issues arising in all these petitions are common, the same were heard analogously and are being disposed of by this common order.

4. For sake of convenience, Special Civil Application No. 4910 of 2025 is treated as a lead matter.

5. Brief facts of the case of Special Civil Application No. 4910 of 2025 are as under:

5.1 The petitioner No.1 is a Private Limited Company engaged in the business of dealing in Building Materials, Steel etc. Petitioner No.2 is one of the two Directors of the Company.

5.2 On 06.03.2025, the petitioners were subjected to a search operation u/s.

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

67 of the Central Goods and Service Tax Act,2017 ['CGST Act' for short] and Gujarat Goods and Service Tax Act ['GGST Act' for short] at the principal place of business of petitioner No.1 and at the residence of petitioner No.2 by respondent No.5. The search authorization letter dated 05.03.2025 was issued by respondent No.5 for suppressing transactions relating to supply of goods and services and also stock of goods in hand, for claiming input tax credit and refund in excess of his entitlement which are in contravention of the provisions of the GST Acts and the Rules.

5.3 During the said search and seizure proceedings on 06.03.2025, the respondent could not access the premises of petitioner No.2, who was travelling.

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

Therefore, the respondents sealed the office premises of petitioner No.1-Company. However, before the search proceedings were concluded, the respondent No.4 initiated proceedings to block the ITC of the petitioner No.1 Company. On the same day, summons was issued to the petitioners to produce Books of Accounts and give Statement on 07.03.2025 and the bank account of the petitioner No.1 company was provisionally attached by respondent No.4 with a subjective satisfaction note in Form GST DRC 22. The said subjective satisfaction note alleges the irregularities committed by the petitioners that the petitioner-company has inward supply from about 15 GSTIN registered entities out of which, two GSTIN Entities are either suspended or

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

cancelled suo moto and against all the GSTIN entities, the common allegation is Movement of goods was not found.

5.4 Thereafter on 07.03.2025, respondent no.4 continued the search and seizure proceedings and after breaking open the lock in absence of petitioner No.2, entered the premises of petitioner No.1-Company but no seizure of documents or things was made, however, summons was issued by respondent No.3 to the petitioners to product Books of Accounts. Respondent No.3 also directed petitioner No.2 to remain present at the GST Office at Vadodara to give statement on 10.03.2025 at 11:00 A.M. Simultaneously, respondent No.4 also directed the petitioner to remain present at the principal place of business at Ahmedabad.

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

In compliance of the aforesaid summonses, the petitioner No.2 expressed the practical difficulties in handing over huge volume of data and documents within such a short period of time and sought for reasonable time for recording the statement.

5.5 Thereafter on 10.03.2025, respondent No.4 continued search and seizure proceedings at the office of the petitioner No.1-Company and seized books of account and documents and the Panchnama was drawn along with FORM GST INS -02. On the very same day, a summons was also issued by respondent no.4 to the petitioners asking the petitioner No.2 to produce Books of Accounts and give statement on 18.03.2025 at 11:00 A.M at GST Office at Gandhidham.

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

5.6 On 21.03.2025, respondent No.4 provisionally attached 'Sundry Debtors' of the petitioner No.1-Company directing the Debtors not to pay any amount to the petitioner No.1-company without prior permission of respondent No.4.

5.7 It is the case of the petitioners that the transactions of the petitioners were structured under "Bill to Ship To" and/or 'Bill from-Dispatch from' and/or "Combination of both" concept wherein, title of the goods change hands before or during the movement of the goods either one or multiple times. It is further the case of the petitioner that transferring the title of the goods, which is a unique physical movement of the goods, should be under the Unique E-Way bill whereas, the

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

petitioners, due to incorrect understanding of the GST Law, has inadvertently issued duplicate E-Way Bill which created a misunderstanding, leading authorities to incorrectly assume a fraudulent transaction when in reality, the tax was fully accounted for, and no revenue loss has occurred.

Being aggrieved and dissatisfied by the actions of the respondents for authorizing search and seizure proceedings u/s. 67(1), blocking of ITC and for passing of order of provisional attachment dated 06.03.2025, the petitioner approached this Court by way of present petition.

6. Learned Senior Advocate Mr. S.N.Soparkar appearing for the petitioners submitted that the respondent-State authorities have

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

not issued the summons and the impugned orders with DIN. It was submitted that as per the Circular No. 37 of 2019 issued by the Central Board of Indirect Taxes and Customs (Investigation-Custom) dated 05.11.2019, it is mandatory for the respondents to mention the DIN in all the summons, arrest memo, inspection notices and letters issued in the course of any enquiry except in exigent circumstances as stated in Para 3 of the said Circular, failing which, such summon, notice etc. has to be treated as invalidated and deemed to have been never issued.

6.1 It was therefore, submitted that admittedly, the impugned summons and attachment order under challenge which are without DIN, cannot be said to have

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

been ever issued by the respondent authority as per the aforesaid Circular.

6.2 It was further submitted that the impugned order of attachment are issued by the Assistant Commissioner who is not an authorised or proper officer because as per the provisions of section 83 of the Gujarat Goods and Service Tax Act,2017 Commissioner is only the authorized person to pass the order of provisional attachment.

6.3 In support of his submissions reliance was placed on the Notification dated 05.07.2017 whereby, the Commissioner of State Tax has delegated all the functions under the GST Act to the Special Commissioner of State Tax and Additional

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

Commissioner of State Tax for carrying out purpose of the Act but not the Assistant Commissioner. Learned Senior Advocate Mr. Soparkar also distinguished the order dated 15.01.2018 issued by the Commissioner of State Tax wherein, proper officer specified in Schedule-A have been assigned to perform the function which includes provisional attachment to protect the revenue in certain cases by Deputy Commissioner of Assistant Commissioner, State Tax. It was therefore, submitted that though the Commissioner has specified the proper officer in order dated 15.01.2018, but the term "Proper Officer" is not referred to or stated in section 83 of the GST Act and therefore, delegation of powers by the Commissioner to "Proper officer" being Deputy Commissioner and

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

Assistant Commissioner of State Tax for assignment of the function of issue of provisional attachment order to protect the revenue is without jurisdiction. It was therefore, submitted that summons and the impugned orders passed by the Assistant Commissioner are without jurisdiction.

6.4 Learned senior advocate Mr. Soparkar submitted that the provisional attachment made by the respondent-authority is without jurisdiction as the respondent-authority has not considered the fact that the petitioners have entered into the transactions of 'Bill To- Ship To' and therefore, there is no evasion of tax as alleged in the satisfaction note. It was further submitted that the

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

petitioner has very good *prima facie* case as the respondent-authorities are invoking provision of section 16(2)(c)of the GST Act and as such, the impugned orders are liable to be quashed and set aside.

7. On the other hand, learned Assistant Government Pleader Ms. Puja Ashar for the respondent submitted that there is no circular issued by the State Tax authority similar to that of the Circular issued by the Central Board of Indirect Taxes and Customs which is addressed to all the Central Officers and there is no provision for issuing DIN in the communications, orders, summons etc. issued by the State Tax authority under the provisions of the Gujarat Goods and Service Tax Act, 2017. It was further submitted that as per the order dated 15.01.2018 (Page 106 of the

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

petition), the Commissioner has assigned the functions mentioned in Schedule-A of the said order that is to say, provisional attachment to protect revenue to Deputy Commissioner and Assistant Commissioner of State Tax and in the facts of the case, the Assistant Commissioner of State Tax has passed the order of provisional attachment.

7.1 It was submitted that the Commissioner has passed the order in exercise of the powers conferred under sub-section (3) of section 5 read with section 2(91) of the Goods and Service Tax Act and the Rules framed thereunder to assign the functions to be performed under the Act by a proper officer and as the Commissioner is a person, who is authorized to pass an order under section

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

83, he has assigned such functions to the proper officer and as per the said order, since 2018, the Deputy Commissioner, Assistant Commissioner and State Tax Officers are passing the order under the provisions of section 83 of the Act. It was submitted that once the functions are assigned by the Commissioner to the designation of proper officer, as defined under section 2(91) of the GST Act, no further fault can be found in the impugned order of provisional attachment. It was submitted that section 2(91) defines the proper officer in relation to any function to be performed under this Act means the Commissioner or the officer of the Central Tax who is assigned their functions by the Commissioner in the Board. It was therefore, submitted that the Commissioner

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

is authorized to pass an order of provisional attachment and Commissioner himself is a proper officer as per section 2(91) of the Act. Therefore, the Commissioner has rightly assigned his functions as the proper officer to pass a provisional attachment while exercising power under sub-section (3) of section 5 of the GST Act.

7.2 With regard to the merits of case is concerned, it was submitted that the petitioner has not preferred any application raising the objections against the satisfaction note and if the petitioner prefers such application, the same shall be considered by the respondent-authority in accordance with law and therefore, at present, this petition is a premature petition and no

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

interference should be made at this stage as the investigation is in process and the respondent-authorities are contemplating a huge evasion of tax by the petitioners.

8. With regard to the contention raised on behalf of the petitioner for not mentioning the DIN is concerned, it appears from the record that DIN on summons or provisional attachment order is not mentioned. The Circular relied upon by the petitioner is issued by the Central Board of Indirect Taxes and Customs addressed to all Principal Chief Commissioner of Customs, Principal Director General, Chief Commissioner of Customs, Director General, Principal Commissioner of Customs, Principal Additional Director General, Commissioner of Customs, Additional Director General

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

and all Joint Secretaries and Commissioner, CBIC. The Circular is not addressed to any of the Commissioners of any of the State Tax who is an authorized person. Therefore, the application of the circular is rightly stated to have been not applicable to the State Tax Officer under the provisions of the GGST Act. Learned Senior Advocate Mr. Soparkar has rebutted such contention of the respondent stating that as the Central Goods and Service Tax Goods and State Goods Service Tax Act are replica and therefore, the Circular issued by the CBIC are also binding upon State Tax Officer. We respectfully disagree with such contention raised on behalf of the petitioner as it is evident from the legal legislative history that both the Acts i.e. Central

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

Goods Service Tax Act and State Goods Service Tax Act are operating by separate Acts, Notification, Circulars issued by the Central Government and the State Government separately. As and when any notification issued by the Central Government or Central Board of Indirect Taxes, similar notification is issued by the State Authorities. However in the facts of the case, it is not brought to our notice that any such similar circular like Circular Number 37/2019 is issued by the State Tax Authority. On a specific inquiry made by this Court to learned advocate Mr. Abhishek Malvi appearing for learned advocate Mr. Maulik Vakhariya for the petitioner, it was stated at bar that no such circular is issued by the State Tax Authority as per his knowledge.

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

9. In view of the above facts emerging from the record, Circular No. 37 of 2019 cannot be said to be applicable to the communications including the summons, notices or any order issued by the State Tax authority.

10. It is also brought to our notice that there is no mechanism of issuance of DIN on any of the communication, notice, summons, orders issued by the State Tax Authorities. In such circumstances, the contention raised on behalf of the petitioner, that the DIN is not mentioned in any of the summons and the previously attachment order being without any basis, is rejected.

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

11. The other contention raised on behalf of the petitioner is that the impugned provisional attachment order passed in this petition is issued by the Assistant Commissioner who is not a Commissioner as required by the provision of section 83 of the GST Act.

12. Section 83 of the GST Act reads as under:

> **"83. Provisional attachment to protect revenue in certain cases.—**
>
> (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed."

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

13. It was further submitted that as per section 2(91), "Proper Officer" is defined and, as per the order dated 15.01.2018, the Commissioner has assigned the functions of provisional attachment to protect the revenue to Deputy Commissioner and Assistant Commissioner as a proper officer and therefore, it cannot be said that impugned orders are passed by the Commissioner who is only the authorised person. The above contention raised on behalf of the petitioner appears to be very attractive in the first blush however, on close scrutiny of the provisions of section 2(91) which defines the proper officer, it appears that the Commissioner himself is a proper officer and as such, once the one proper officer has assigned the functions while

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

exercising power conferred under sub-section (3) of section 5 of the Act, to other proper officer, it cannot be said that the delegation of assignment of the powers by the Commissioner by impugned order dated 15.01.2018 is contrary to the provisions of the GST Act. This contention is already considered by this Court in case of **Nathalal Maganlal Chauhan vs. State of Gujarat** reported in [2020] 114 taxmann.com 424 (Gujarat) as under:

> "43. Mr.Pandya invited our attention to a decision of this Court in the case of Valerius Industries (supra), more particularly, the observations made by this Court in para-35. We quote para-35 as under:
>
> > "In the case on hand, Section 83 makes it abundantly clear that it is the Commissioner's opinion which is relevant. The

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

> Legislature has thought fit to confer this power upon the Commissioner. Whether such power conferred upon the Commissioner by the legislature could have been delegated to the three subordinate officers referred to above by virtue of the order dated 15th January 2018 passed in exercise of power under sub-section (3) of Section 5 read with clause 19 of Section 2 of the Act and the rules framed thereunder. In our opinion, the answer has to be in the negative. Although there is no specific challenge to the order dated 15th January 2015 passed by the Commissioner of State Tax delegating his power under Section 83 to the subordinate officers, yet, we are of the view that by virtue of such order, such impugned order of provisional attachment cannot be defended. "

44. In Valerius Industries (supra), this Court was dealing with a matter in which the subject matter of challenge was an order of provisional attachment under Section 83 of the Act. For the purpose of Section 83 of the Act, the Legislature thought fit

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

to confer the power upon the Commissioner. However, in this regard also, the Commissioner has issued a notification dated 15th January 2018 delegating his power to three subordinate officers. While considering the challenge, this Court observed in para-35 as quoted above.

45. We are of the view that the observations made by this Court in the above referred para-35 could be termed as per incurium as such observations run contrary to the Supreme Court decisions referred to above in this judgment.

46. It is an accepted principle of administrative law that the repository of power must exercise that power personally. However, there are two exceptions to this principle:

1. Legislation provides for the power to delegate or authorise:

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

> An express power to delegate, usually in legislation, allows the person who has the legislative authority to delegate that authority to others. The individual/s or position/s having the delegation can exercise the authority in their own right. An example of an express power to delegate can be seen in section 5(3) of the Act, 2017.
>
> 2. Implied power to authorise:
>
> An implied power to authorise, arises where even though there may or may not be an express power to delegate in legislation, there can be an implied power for an official to exercise the power on the person's behalf - it is often termed the 'alter ego' principle, the 'Carltona principle' or an implied power to delegate. This principle arose from the decision Carltona Limited v Commissioner of Works [1943] 2 ALL ER 560.

47. The principle is: devolving power is permitted in the cases where the nature, scope, and purpose of the power in legislation means that it is unlikely that the

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026

> Parliament intended that the power is to be exercised personally, and the only practical way the power can be exercised is by the officers who are responsible to the person (who has the power by legislation).”

14. Therefore, reliance placed by the petitioner on notification dated 05.07.2017 whereby the powers of the Commissioner are delegated to the Special Commissioner of State Tax and Additional Commissioner of State Tax for the purpose of said Act would not be applicable in the facts of the case when by order dated 15.01.2018 (page 106 of the petition), the Commissioner being a proper officer has assigned the function which is to be performed by him by the another proper officer and therefore, it cannot be said that the impugned orders passed by the

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

Assistant Commissioner of State Tax is without jurisdiction but the impugned orders are passed by the Assistant Commissioner while exercising powers assigned to him as per the order dated 15.01.2018.

15. With regard to the contention raised on behalf of the petitioner on merits, it is not in dispute that the petitioner has not filed any application raising objections against the satisfaction recorded by the respondent-authorities while passing impugned orders of provisional attachment. In such circumstances, without entering into the merits of the matter, we relegate the petitioners to file appropriate application raising objections against the satisfaction recorded by the respondent authority for passing provisional

Uploaded by () on www.taxcode.in Downloaded on : Thu May 07 18:20:50 IST 2026

attachment in the facts of the case and as and when such application if any is made by the petitioner before the respondent-authority, the same shall be considered by the respondent-authority expeditiously and preferably within a period of two weeks from the date of receipt thereof.

16. With the aforesaid observation and direction all these petitions are disposed of. No order as to costs.

(BHARGAV D. KARIA, J)

(P. M. RAVAL, J)

JYOTI V. JANI

Uploaded by () on
www.taxcode.in
Downloaded on : Thu May 07 18:20:50 IST 2026