IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15204 of 2024

FOR APPROVAL AND SIGNATURE:

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

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Approved for Reporting	Yes	No
		No

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SHARDA CONSTRUCTION THROUGH SHAILESHKUMAR DAHYABHAI PATEL
Versus
STATE OF GUJARAT & ORS.

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Appearance:
UCHIT N SHETH(7336) for the Petitioner(s) No. 1
MR TRUPESH KATHIRIYA, AGP for the Respondent(s) No. 1,2,3
NOTICE SERVED for the Respondent(s) No. 1,2,3

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

Date : 08/05/2025
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr.Uchit N. Sheth for the petitioner and learned Assistant Government Pleader Mr.Trupesh Kathiriya for the respondents.

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2. **Rule,** returnable forthwith. Learned Assistant Government Pleader Mr.Trupesh Kathiriya waives service of notice of rule for and on behalf of the respondents.

3. By this petition under Article 227 of the Constitution of India, the petitioner has prayed for following reliefs :

> *"A. This Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order quashing and setting aside impugned show cause notice dated 27.9.2023 (annexed at Annexure A) issued under Section 73 of the GST Acts along with all subsequent proceedings and orders as being wholly without jurisdiction, arbitrary and*

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illegal;

B. This Hon'ble Court may be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ or order quashing and setting aside impugned order dated 22.12.2023 (annexed at Annexure B) as well as order dated 21.6.2024 (annexed at Annexure C) as being wholly without jurisdiction, arbitrary, mechanical and illegal;

C. Without prejudice to the above and in the alternative, this Hon'ble Court may be pleased to strike down and declare Section 107(4) of the GST Acts in as much as debars appellate authority from condoning delay in filing appeals even in case where the

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taxable person is in a position to satisfactorily explain the delay as being manifestly arbitrary, discriminatory and violating Articles 14 and 19(1)(g) of the Constitution of India;

D. Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to stay operation, execution and implementation of impugned order dated 22.12.2023 (annexed at Annexure B);

E. Ex parte ad interim relief in terms of prayer D may kindly be granted;

F. Such further reliefs) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of

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kindness your Petitioner shall forever pray."

4. The brief facts of the case are as under :

4.1. The petitioner is a proprietorship concern engaged in the business of building construction and duly registered under the Goods and Services Tax Act, 2017 (for short 'the GST Act').

4.2. It is the case of the petitioner that the petitioner regularly files returns and pays taxes under the GST Act and at the time of obtaining registration, the petitioner had submitted its current Email address at that point of time on the GST portal, however, inadvertently, could not pay domain renewal charges for such Email post 20.06.2021 and therefore, such Email address got deactivated.

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4.3. The petitioner being engaged in building construction is entitled to claim Input Tax Credit (for short 'the ITC') of the tax paid on inputs, input services and capital goods used in the course or furtherance of business, however, Section 17(2) of the GST Act read with Rules 42 and 43 of the Central/ State Goods and Services Tax Rules, 2017 (for short 'the GST Rules') requires reversal of such ITC to the extent it is attributable to exempt supplies which includes building units sold after issuance of Completion Certificate by the competent authority.

4.4. It is the case of the petitioner that the petitioner claimed the ITC during the year 2017-18 in respect of purchases of goods and services made in the course or furtherance of business. The supply of building units made after issuance of Completion Certificate was

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also duly reflected by the petitioner in the GST returns.

4.5. In so far as the reversal of the ITC is concerned, since some miscellaneous work relating to the project was still going on, the petitioner was awaiting completion in entirety so as to reverse the ITC on a consolidated basis because any claim or reversal of the ITC for the year 2017-18 was possible as per Sections 16(4) and (9) of the GST Act.

4.6. It is the case of the petitioner that after completion of the entire project, the ITC attributable to exempt supplies was reversed by the petitioner on 19.10.2018 while filing return for the month of September 2018 and the fact that the ITC had already been reversed was also reflected by the petitioner

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in annual return filed in Form GSTR 9 and annual reconciliation statement filed in Form GSTR 9C for the year 2018-19.

4.7. Despite reversal of the ITC being made by the petitioner pertaining to the years 2017-18 as well as 2018-19 on 19.10.2018, impugned show-cause notice was uploaded on the portal on 27.09.2023 on the ground that the petitioner had not reversed the ITC pertaining to exempt supplies and as e mail address of the petitioner had been deactivated, the petitioner did not receive any intimation of such show-cause notice. The petitioner was also not aware about such notice having been uploaded on the portal and hence, the petitioner could not respond to the notice and the respondent-authority proceeded to pass ex-parte order dated 22.12.2023 confirming demand of tax with interest and penalty on the ground

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of non-reversal of input tax credit under Rules 42 and 43 of the GST Rules. It is the case of the petitioner that such order was only uploaded on the portal and the petitioner did not receive any intimation of the same and therefore, the petitioner could not immediately take legal recourse for challenging such order as the petitioner was completely unaware such order.

4.8. It is also the case of the petitioner that the Accountant of the petitioner received a telephonic call on 03.05.2024 from the Jurisdictional Officer inquiring about payment to be made by the petitioner towards the demand raised in the impugned order and therefore, it was informed by the petitioner that the petitioner was unaware about any such order having been passed and requested for copy of such order and thereafter, on

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06.05.2023, the order was manually served upon the petitioner with due seal of the Department.

4.9. The petitioner immediately filed an Appeal on 06.05.2024 for challenging the Adjudication Order mentioning therein that the date of communication of the order was 03.05.2024, however, the Appellate Authority passed the impugned order on 21.06.2024 rejecting the Appeal filed by the petitioner on the ground of delay in filing the Appeal. Hence, being aggrieved and dis-satisfied with the impugned order dated 21.06.2024, the petitioner has preferred this petition.

5.1. Learned advocate Mr.Uchit Sheth for the petitioner submitted that the petitioner has already reversed the ITC in the Electronic Credit Ledger on 19.10.2018 which is duly

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reflected in the Form GSTR-3B filed for the month of September, 2018 on 19.10.2018. He invited the attention of the Court to the Form GSTR 3B to show that the petitioner has already reversed the ITC amounting to more than Rs.40 Lakhs and also referred to the Electronic Credit Ledger at page No.32 of the petition to show that there is a debit entry of Rs.38,01,319/-.

5.2. Learned advocate Mr.Uchit Sheth also referred to the annual return in Form GSTR 9 to show that there is no outstanding entry for ITC to be reversed coupled with Form GSTR 9C reconciliation wherein, it is stated that the petitioner has already reversed the ITC for the period 2017-18 and 2018-19. It was therefore submitted that the respondent-Authority could not have assumed the jurisdiction to issue the impugned notice and

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pass the Order-in-Original raising the demand on ground of non-reversal of ITC otherwise it would amount to double taxation of the same amount as the petitioner has already reversed the ITC on 19.10.2018.

5.3. Learned advocate Mr.Uchit Sheth also placed on record the working of the ITC availed and reversal made by the petitioner as under for the years 2017-18 and 2018-19 :

Sharda Construction				
ITC Availed & Reversal Working				
Particulars	IGST	CGST	SGST	Total
ITC availed during the F.Y. 2017-18	993	15,08,032	15,08,032	30,17,057
ITC availed during the F.Y. 2018-19 Upto Sep-18	0	5,41,085	5,41,085	10,82,170
	993	**20,49,117**	**20,49,117**	**40,99,227**
ITC utilised during the F.Y. 2017-18	0	22,109	22,109	44,218
Apr-18		22,109	22,109	44,218
Jun-18		22,368	22,368	44,736
Aug-18		82,368	82,368	1,64,736
ITC utilised during the F.Y. 2018-19 Upto Sept-18	**0**	**1,26,845**	**1,26,845**	**2,53,690**
ITC Reversed in Sept-2018 GSTR-3B	993	19,00,163	19,00,163	38,01,319

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Total	993	20,49,117	20,49,117	40,99,227
	0	-	-	-
Total ITC Utilised	**0**	**1,48,954**	**1,48,954**	**2,97,908**

Sharda Construction				
ITC Availed & Reversal Working				
Particulars	IGST	CGST	SGST	Total
ITC Reversed in Sept-2018	993	19,00,163	19,00,193	38,01,319
Less: ITC Reversal of 2017-18	993	14,85,923	14,85,923	29,72,839
Less: ITC Reversal of 2018-19	0	4,14,240	4,14,240	8,28,480
Please note that DRC-01 for F.Y. 2017-18 has mentioned reversal of ITC of Rs.	**0**	**14,56,750**	**14,56,750**	**29,13,500**
Less: Actual reversal as above	993	14,85,923	14,85,923	29,72,839
Excess ITC reversed as per actual data in GSTR-3B	-993	(29,173)	(29,173)	(55,339)

5.4. In support of his submissions, reliance was placed on the decision of this Court in case of ***Ajay Industries & Another versus Union of India and Others*** rendered on 16.04.2025 in Special Civil Application No.2951 of 2025.

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5.5. Learned advocate Mr.Uchit Sheth submitted that though the impugned show-cause notice and order were uploaded on the portal, the petitioner was not aware as no intimation was given by the respondent-Authority and when the petitioner was served with the impugned order dated 22.12.2023 on 03.05.2024 in physical mode, the petitioner immediately preferred an Appeal on 06.05.2024 before the Appellate Authority, however, the same was dismissed on ground of delay.

6.1. On the other hand, learned Assistant Government Pleader Mr.Trupesh Kathiriya for the respondents submitted that the petitioner has not filed any reply to the show-cause notice and therefore, the impugned Order-in-Original was passed in terms of the show-cause notice. It was also pointed out that the

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respondent-Authorities have already uploaded the show-cause notice as well as the Order-in-Original on the portal and the petitioner was supposed to verify the same and in absence of any reply filed by the petitioner, the respondent-Authority has constrained to pass the Order-in-Original.

6.2. It was further submitted that in absence of the computation and the reconciliation which are submitted by the petitioner before this Court, the respondent-Authority was not in position to verify the details and the data from the available records and therefore the impugned order is passed.

7. Considering the above submissions, it appears that it is not in dispute that the petitioner has reversed the ITC for the period

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2017-18 on 19.10.2018 and therefore, the respondent could not have assumed the jurisdiction to issue the impugned notice on the ground that the petitioner has failed to reverse the ITC. Moreover, the petitioner has also admitted that as the GST Portal was new, the petitioner was not familiar with such portal and could not verify the uploading of the notice and subsequent Order-in-Original on the portal and the petitioner came to know about the same only when the Order-in-Original was served in physical form on 03.05.2024 and the petitioner has already preferred an Appeal before 06.05.2024, however, Appellate Authority has not condoned the delay as per the provisions of Section 107 of the GST Act and therefore, the petitioner had no option but to file the present petition.

8. It also appears that the respondent has

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not disputed about the reversal of the ITC by the petitioner for the period 2017-18 and only contention raised is that there is no reconciliation available with the respondent regarding the ITC reversed by the petitioner for the years 2017-18 and 2018-19. In such circumstances, only remedy available is to quash the impugned Order-in-Original and remand the matter back to the respondent-Authority to verify the reversal of the ITC made by the petitioner for the period 2017-18 in accordance with law and pass appropriate fresh *de novo* order in accordance with law.

9. The petition is accordingly disposed of. The impugned Order-in-Original dated 22.12.2023 is hereby quashed and set aside. The matter is remanded back to the respondent-Adjudicating Authority to pass a fresh *de novo* order within a period of twelve weeks

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from the date of receipt of the copy of this order. Rule is made absolute to the aforesaid extent. No orders as to cost.

(BHARGAV D. KARIA, J)

(P. M. RAVAL, J)

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