IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5804 of 2026

With
R/SPECIAL CIVIL APPLICATION NO. 5884 of 2026

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SHANTI CONSTRUCTION (GUJ.) PVT. LTD.
Versus
GANDHINAGAR URBAN DEVELOPMENT AUTHORITY
==
Appearance:
MR MANISH R BHATT, SR. ADV. with MUNJAAL M BHATT(8283) for the Petitioner(s) No. 1
MR NK MAJMUDAR(430) with MR SHIVAM MAJMUDAR for the Respondent(s) No. 1
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CORAM:**HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA**
and
HONOURABLE MR.JUSTICE J. L. ODEDRA

Date : 12/08/2026

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)

1. Special Civil Application No.5804 of 2026 is filed by M/s. Shanti Construction (Gujarat) Pvt. Ltd. (M/s. Shanti Construction) in respect of the two works that were executed with the respondent Gandhinagar Urban Development Authority (GUDA).

2. Special Civil Application No. 5884 of 2026 is filed by M/s. Anand Associates in relation to the works that they had executed with GUDA.

3. Both these writ petitions relate to the claim of the petitioners regarding their claim for reimbursement of differential GST that they have paid.
4. These facts are not in dispute.
5. A Tender Notification was issued by the GUDA for construction of 1352 EWS II residential flats including infrastructure development at Vasana-Hadmatiya.
6. A Tender Notification was issued in respect of construction of 624 EWS II residential flats at Sargasan. Both these Tender Notifications were issued in the month of June, 2022.
7. Similarly, a Tender Notification was issued in respect construction of 369 EWS II residential flats at Vavol.
8. The first two tenders were awarded to M/s. Shanti Construction i.e., the tender for the construction of 1352 flats with 624 flats. The tender for construction of 369 flats was awarded to M/s. Anand Associates.
9. All these three Tender Notifications contained a clause regarding the payment of GST which reads as follows:

> *"Clause 34:*
>
> *Conditions for reimbursement of levy/taxes if levied after receipt of tenders:*

1. All tendered rates shall be inclusive of all taxes and levies (including Service Tax) payable under respective statutes. However, if any further Tax or levy or Cess is imposed by statutes, after the last stipulated date for the receipt of tender including extensions if any and the Contractor thereupon necessarily and properly pays such taxes/levies/cess, the contractor shall be reimbursed the amount so paid, provided such payments, if any, is not, in the opinion of the Chief Executive Authority (whose decision shall be final and binding on the contractor) attributable to delay in execution of work within the contract of the contractor.

2. The contractor shall keep necessary books of accounts and other documents for the purpose of this condition as may be necessary and shall allow inspection of the same by a duly authorized representative of the GUDA and/or the Engineer-in-Charge and shall also furnish such other information/document as the Engineer-in-Charge may require from time to time.

3. The contractor shall, within a period of 30 days of the imposition of any such further tax or levy or cess, give a written notice thereof to the Engineer-in-Charge that the same is given pursuant to this condition, together with all necessary information relating thereto."

10. As could be seen from the above, the notifications clearly stipulated that the tendered rates were to include all taxes and levies (including service tax) payable under the respective statutes. It also contained a specific stipulation that if any further tax or levy or cess is imposed by statutes after the last stipulated date for the receipt of tender (including extensions, if any) and the contractor, thereupon

paid such taxes, the contractor would be reimbursed of the amounts he had paid. The only proviso to this was that, if in the opinion of the Chief Executive Authority (whose decision is stated to be final and binding) there was a delay attributable to the contractor in relation to the execution of the works.

11. Admittedly, in all these three cases, there was no delay in execution of the works, and the works had, in fact, been completed within the time stipulated.

12. All the Tender Notifications stipulated that the last date for submission of the bids was on 13.07.2022. Thus, as per Clause 34, the tendered rates would have to include all taxes and levies payable under the respective statutes as prevailing on the last stipulated date for receipt of the tender. In other words, the tendered rates would have included taxes as would be leviable as on 13.07.2022, i.e the last date for submission of the bids.

13. M/s. Shanti Constructions submitted the bid for Rs.32,335/- per sq.meter in respect of the construction of 1352 residential flats and Rs.34,795/- per sq.meter in respect of the construction of 624 flats. M/s. Anand Associates submitted a bid of Rs.35,811/- per sq.meters in respect of

the construction of the 369 flats.

14. Negotiations were thereafter conducted between the petitioners and the GUDA and, ultimately, a negotiated rate was also arrived at.

15. Pursuant to the negotiations, M/s. Shanti constructions reduced their quoted rate from Rs.32,335/- per sq.meter to Rs.32,290/- per sq.meter in respect of 1352 flats and from Rs.34,795/- to Rs.34,700/- per sq.meters in respect of 624 flats. M/s. Anand Associates also reduced their rate from Rs.35,811 to Rs.35,555/- per sq.meter. This negotiated rate was made known to the GUDA vide their letters dated 03.08.2022.

16. GUDA accepted these negotiated rates offered and issued Work orders to M/s. Shanti Constructions on 15.10.2022 and to M/s.Anand Associates on 14.10.2022.

17. As already stated above, pursuant to the works orders issued, the petitioners have, admittedly, executed the work within the stipulated date.

18. The controversy, however, in this case relates to the rate at which the GST was payable by the petitioners and the reimbursement of the tax, if any, that they were entitled to.

19. It is not in dispute that as on 13.07.2022, i.e., the last date

stipulated for submission of the tenders, the GST rate that was leviable on the works contracts, was 12%. In other words, the tendered rates had to include the prevailing rate of tax of 12%.

20. It is the case of the GUDA that the GST Council had issued a Press Note on 29.06.2022 which stated that in the 47th Meeting of GST Council, it had been decided on 28/29th July, 2022, a recommendation was being made to increase the rate of GST from 12% to 18% on works contracts.

21. The GUDA, therefore, submits that the rate of 18% in the prescribed Press Release was the rate that the petitioners took into consideration and had incorporated in their quote dated 13.07.2022 and, therefore, they are not entitled for reimbursement on the ground that the rate of taxation as on the date of submission of the tenders was only 12%.

22. It is the case of the petitioners that the rate of tax of 18%, as stated in the Press Release issued on 29.06.2022, could not be the rate included in the tendered rates since the date of the press release i.e., 29.06.2022 would be of no relevance and that was because of the Note appended to the Press Release, which reads as follows:

"Note: The recommendations of the GST Council have

been presented in this release containing major item of decisions in simple language for information of all stakeholders. The same would be given effect through relevant Circulars/Notifications/Law amendments which alone shall have the force of law."

23. It is, therefore, the case of the petitioners that the tax rate of 18%, which had been decided in the 47th Meeting of the GST Council, would come into effect only on the amendments made to the respective statutes and on the issuance of the appropriate Circulars or Notifications. It is stated that, since as on 13.07.2022, neither the law was amended nor a Notification was issued specifying the rate of taxation 18%, the question of the petitioners incorporating the said rate of 18% in the tendered rates would not arise. In other words, it is submitted that the petitioners had to necessarily take into consideration the GST rates of 12% by submitting the tendered rate, since that was the rate of taxation prevailing as on the last date of submission of the tenders.

24. It is also submitted that there was no guarantee that the recommendations of the GST council would automatically be accepted and the rate of tax would stand increased and as a matter of fact, as to from which date the tax rate would be enhanced could never be known to anyone, let alone the

bidders, such as the petitioners.

25. It is not in dispute that by way of a Notification dated 13.07.2022 (which was published in the gazette on 14th July, 2022) issued by the Ministry of Finance amendments made to the GST tax rates were notified. This Notification dated 13.07.2022 clearly stipulated that the amendments, i.e., the change in the rate of tax rates would come into effect from 18.07.2022 i..e, a clear 5 days after the last date stipulated for the submission of the tenders.

26. The relevant clause relating to the date from which the tax rates would come into effect reads as under:-

> *"Note: The last date for exercising the above option for any financial year is the 15th March of the preceding financial year. The option for the financial year 2022-2023 can be exercised by 16th August, 2022".*
>
> *2. **<u>This notification shall come into force with effect from 18th July, 2022."</u>***

27. It is, therefore, the contention of the petitioners that the change in the rate of taxation from 12% to 18% came into effect only from 18.07.2022, i.e. five days after the date for submission of the tenders and they were therefore, bound to pay taxes at the enhanced rate. They, thereafter, go on to

contend that since this was levy which came into operation after the last date stipulated for the submission of the tenders, they were required to pay this enhanced rate of taxation and thereafter claim reimbursement as per Clause 34. It is stated that since the petitioners did pay the enhanced rate of taxation, which came into force after the last date stipulated for submission of the tenders, they were clearly entitled for reimbursement of the differential GST amount that they had paid.

28. The GUDA, on the other hand, though does not dispute the fact that the rate of taxation was at 12% as on the last date for submission of the bids, seeks to place reliance on the fact that there was a Press Release and further seeks to contend that ultimately the negotiated rates were submitted on 03.08.2022, i.e. after the enhanced taxation rate had come into effect and, therefore, the petitioners were bound to bare the liability of the enhanced rate of taxation. In other words, it is the case of the GUDA that since the negotiated rate submitted by the petitioners was after 18.07.2022 (i.e. on 03.08.2022), the onus would be on the petitioners to pay the enhanced rate of taxation and not on the GUDA.

29. We are unable to accept the contention of GUDA for the

following reasons.

30. Clause 34, which is extracted above, clearly stipulates that the tendered rates should be inclusive of taxes and levies that are payable under the respective statutes. Since the last date for submission of the tenders was 13.07.2022 it is obvious that the rate of taxation that the petitioners would have taken into consideration was the actual rate prevailing as per the relevant statutes, which was 12%.

31. The argument of the GUDA that there was a Press Release in which there was a clear proposal to enhance it to 18% and this was within the knowledge of the petitioners and they had, accordingly, tendered their rates taking into consideration this 18%, cannot be accepted. This is because the second portion of Clause 34(1) categorically states that if any further tax or levy was imposed by the statutes after the last stipulated date for receipt of the tenders, the bidders, on payment of the enhanced tax, would be entitled for a reimbursement. Since the reimbursement of a tax paid in excess of the rates which prevailed as on the last date of submission of tenders was assured under the notification, it is obvious that the petitioners would have submitted their tendered rates keeping in mind the rates that were prevailing

as on 13.07.2022 and not at the proposed enhanced rate of tax.

32. It may be pertinent to state here that the Press Release dated 29.06.2022 was only a recommendation of the GST Council and there was no guarantee that the same would translate into an amendment of the relevant laws unless a Notification was actually issued by the Central Government. In such a situation, the stand of the GUDA that the petitioners had taken that into consideration while submitting their tendered rates cannot be acceptable.

33. It is also to be noticed here that if the Tender Notification, took care of a possible situation i.e., an increase in the taxes leviable on the works contract and specifically made a provision for reimbursement by also stipulating the tax rates that may be enhanced after the last date stipulated for receiving tenders would be reimbursed. This clause, by itself, indicates that GUDA was also aware that if at all there was any increase in the rate of levy the same would have to be borne by the authority and not by the contractor.

34. The mere fact that a negotiated rate was submitted on 03.08.2022 cannot alter this immutable fact. It must also be taken note here that if the petitioners were to incorporate the

enhanced rate of taxation, the question of the rate quoted by them being reduced after negotiation would never arise. If anything, by virtue of the increase in the rate of tax to 18%, the cost of construction would actually have been higher because of the higher tax.

35. Obviously, the rate that had been tendered, was with reference to the 12% which was prevailing as on the last date of submission of the tenders. It is inconceivable that the petitioners would have incorporated the rate of tax at 18% while submitting their tenders and still proceeded to reduce the rates to make themselves competitive. This line of argument is a complete misconception on the part of the authorities.

36. We are, therefore, of the view that any enhancement of tax rates after 13.07.2022 will have to be necessarily borne by the authority and if the petitioners have paid the enhanced rate of tax, i.e. 18% they are entitled for reimbursement as per Clause 34 of the tender Notification.

37. Learned counsel for GUDA, however, sought to contend that the contract provided for arbitration and since the authority was not agreeing to the contention of the petitioners that they had submitted the negotiated rate by incorporating the

enhanced rate of taxation, the matter ought to be referred to arbitration and writ petitions ought not to be entertained.

38. Learned counsel placed reliance on the judgements rendered by the Supreme Court in the case of ***Phr Invent Educational Society vs. UCO Bank***, 2024(0) AIJEL-SC 73527 and in the case of ***K. Mangayarkarasi vs. N.J. Sundaresan***, 2025(0) AIJEL-SC 75333.

39. As far as the legal position is concerned, the law is well settled in ***ABL International Ltd. vs. Export Credit Guarantee Corporation of India***, (2004) 3 SCC 553, , it has been held as follows:

> *"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. vs. Registrar of Trade Marks [(1998) 8 SCC 1]) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said*

jurisdiction.”

(emphasis supplied)

40. This decision has also been approved subsequently including by three Judges Bench of the Supreme Court. It is, therefore, clear that the High Court has a plenary power to issue prerogative writ and there cannot be an absolute bar. The exercise of this power is, however, left to the discretion of the Courts. In this case, since, the only dispute is in relation to the liability of the GUDA to pay the GST as on the last date for submission of the tenders or the subsequent enhanced rates is to be considered and for examining this issue, it cannot be said that it is a contractual dispute *per se*.

41. As far as the first submission that there was an arbitral clause is concerned, in our view, this argument is completely misconceived.

42. Admittedly, there is no dispute regarding the execution of the work in any manner or is there a dispute that the contractual terms were breached. The only dispute is as to who should bear the enhanced rate of tax which came into effect after the last date of submission of the tenders. This, issue, can never be considered as a dispute arising in relation to the contract, when the contractual term itself clearly stated that any

increase in the rate of tax after the last date of submission of tenders would be the liability of GUDA. In our view, GUDA is putting forth this plea of there being an arbitration clause, only to escape its liability to bear the cost arising out of the increase in the rate of taxation.

43. It must be borne in mind that the arbitration clause is incorporated only with regard to any dispute in relation to the execution of the contracts and cannot be used to disown the liability to pay the enhanced tax, which in any way, is to be borne by GUDA, though it is paid by the petitioners as it is their obligation to collect the tax from the person availing the service and remit it to the authorities.

44. There is no dispute regarding the execution of the work attracted the rate of taxation at 18%. It is not in dispute that the petitioners have, in fact, paid tax at the rate of 18% on the works executed by them. The only question is as to whether the petitioners were required to pay tax at the rate of 18% which came into operation after the last date stipulated for submission of the tenders or whether GUDA is liable to bear this enhanced rate of tax at 18%.

45. If the answer to this question is in the positive, necessarily, as per Clause 34, it is the authority which would have to

reimburse the enhanced tax paid by the petitioners. A reading of Clause 34 leaves no room for doubt that the petitioners were required to quote the rates keeping in mind the rate of taxation as on the last date of submission of the tenders. Admittedly, the prevailing rate of tax as on the last date of submission of tenders was 12%. The subsequent part of Clause 34 also confirms and reinforces the fact that any levy which came into being after the last date of submission of tenders, the petitioners were required to pay tax at the enhanced rate and, thereafter, claim reimbursement. Admittedly, the enhanced rate of taxation, i.e. 18% came into effect from 18.07.2022. A clear five days after the last date for submission of the tenders i.e., on 13.07.2022.

46. It is, therefore, clear that there is no dispute about these facts at all, and if these facts are not disputed, the question of referring the parties to arbitration would not arise. The judgements that are sought to be relied upon related to cases where the Supreme Court was considering disputed questions of facts in relation to the execution of the contracts, which had been urged by the respective parties therein.

47. We are, therefore, of the view that the judgements relied

upon by the learned counsel for the respondent is of no avail.

48. Learned counsel appearing for GUDA also put forth the contention that the writ petition does not deserve to be entertained since it is relatable to a contract and interpretation of contractual clauses or adherence to contractual conditions cannot be considered in a writ petition. In our view, this argument is also misconceived. The questions raised in this petition do not relate to the breach of any contractual condition, which requires an adjudication of disputed questions of fact.

49. As already pointed above, the facts of the payment of tax after a levy has come into force after the last date of submission of tenders and its reimbursement by GUDA are clearly and specifically stipulated in the tender notification and it is also not disputed by GUDA that the said contractual conditions of payment of the enhanced rates of tax have been complied with by the petitioners. We are, therefore of the view that this argument is also without any merit.

50. An argument was also advanced by the learned counsel appearing for the respondent that the dispute was squarely covered under the provisions of the Gujarat Public Works Contracts Dispute Arbitration Tribunal Act, 1992 and,

therefore, the matter was required to be referred to arbitration under that particular statute.

51. Section 2(e) of the Act reads as follows:

> *"(e) "dispute" means any difference relating to any claim valued at any amount equal to or exceeding fifty thousand rupees, arising out of the execution or non-execution of whole or part of a works contract."*

52. As could be seen from the above, the dispute is defined to mean any difference relating to any claim valued to any amount equal to or exceeding fifty thousand rupees and this difference should be arising out of the execution or non-execution of whole or part of the works contract. As already noticed above, there was absolutely no dispute about the execution of the works. The respondent GUDA does not dispute the fact that the works were executed satisfactorily and within the stipulated date. It is, therefore, clear that there was no dispute coming within the meaning of the term "dispute" under the Act and consequently the matter could not be referred for arbitration.

53. As a result, we are of the view that the petitioners would be entitled for reimbursement of the tax that they have paid at the rate of 18%.

54. We called upon the respondent to file an affidavit indicating

the tax paid by the petitioners at the rate of 18% and also tax that would have been paid at the rate of 12%. An affidavit is filed by an Executive Engineer of GUDA in which it is stated that the tax payable would be as per the tabular column annexed to the affidavit. The tabular columns are as under:-

M/s. Anand Associates

Particulars	Tender @12%	Tender @18%	As per GST Return	Actual to be paid @ 18%	Diff. of GST yet to be paid to the petitioner	Diff. of tax to be paid by the petitioner
Basic Value	45,31,85,470	43,01,42,141	43,01,42,141	45,31,85,470	2,71,91,129	**41,47,800**
Total Contract value	50,75,67,726	50,75,67,726	50,75,67,727	53,47,58,855		
Actual GST to be paid at 18%	5,43,82,256	7,74,25,585	**7,74,25,586**	**8,15,73,385**		

M/s. Shanti Construction-1352

Particulars	Tender @12%	Tender @18%	As per GST Return	Actual to be paid @ 18%	Diff. of GST yet to be paid to the petitioner	Diff. of tax to be paid by the petitioner
Basic Value	1,46,71,78,753	1,39,25,76,443	1,39,25,76,443	1,46,71,78,753	8,80,30,726	**1,34,28,415**
Total Contract value	1,64,32,40,203	1,64,32,40,203	1,64,32,40,207	1,73,12,70,929		
Actual GST to be paid at 18%	17,60,61,450	25,06,63,760	**25,06,63,764**	**26,40,92,176**		

M/s. Shanti Construction-624

Particulars	Tender @12%	Tender @18%	As per GST Return	Actual to be paid @ 18%	Diff. of GST yet to be paid to the petitioner	Diff. of tax to be paid by the petitioner
Basic Value	70,78,29,101	67,18,37,791	67,18,37,791	70,78,29,101	4,24,69,746	**64,78,435**
Total Contract value	79,27,68,593	79,27,68,593	79,27,68,597	83,52,38,339		
Actual GST to be paid at 18%	8,49,39,492	12,09,30,802	**12,09,30,806**	**12,74,09,238**		

55. In response to this affidavit, the petitioners have filed an affidavit admitting that there is indeed a shortfall of tax that

is to be paid to the GST authorities (last column of Table in Paragraph No.54) and that is because of the fact that once the differential GST amount is reimbursed to the petitioners by GUDA (second last column of Table in Paragraph No.54), they would then submit a bill and, thereafter, remit the differential amount to the GST authorities. An undertaking is also given that upon the reimbursement by the GUDA of the differential amounts, they would deposit the deficient GST and also produce the proof of deposit to the GUDA authorities.

56. In the light of this affidavit, it is obvious that the petitioners would be entitled for reimbursement of the differential amount of tax that they have already paid to the authorities and the GUDA shall, accordingly, pay the amounts as indicated in their affidavit to the petitioners.

57. On this amount being paid to the petitioners, they shall deposit the deficient amounts of tax as indicated above in paragraph No. 54 within a period of one week and produce proof of deposit before the GUDA authorities and also before this Court.

58. In the event of there being any default on the part of the

petitioners in making this payment to GST authorities, liberty is reserved to the GUDA to move an appropriate application in this matter even though these matter have been disposed off for appropriate orders.

59. The GUDA is directed to comply with this order within a period four weeks.

60. Though we are inclined to grant interest at the rate of 18% at the persuasion of the learned counsel for the GUDA, we restrain ourselves from awarding interest though the money was wrongfully withheld for three years. We, however, make it clear that if the amounts as ordered above are not paid by the GUDA to the petitioners within the period of four weeks as stipulated above, the GUDA shall also be liable to pay interest at the rate of 6% per annum from the date the first demand was made by the petitioners for reimbursement.

61. The writ petitions stand disposed off accordingly.

(N.S.SANJAY GOWDA,J)

(J. L. ODEDRA, J)

SUDHIR