NEUTRAL CITATION
2026:GUJHC:59273-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12791 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No

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NEPTUNE ENTERPRISE & ANR.
Versus
STATE OF GUJARAT & ORS.

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Appearance:
UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2
MS TANUSHREE SHRIMAL, AGP for the Respondent(s) No. 1
NOTICE SERVED for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 18/09/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present petition, the petitioners have assailed the Appeal order dated 04.05.2024, passed under Section 107 of the Central/Gujarat Goods and Services Tax Act, 2017 (for short 'GST Act') confirming cancellation of registration certificate of the petitioners as well as the show cause notice dated 10.11.2022 proposing to cancel the registration

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certificate.

2. At the outset, learned advocate Mr.Uchit N. Sheth, appearing for the petitioners, submitted that the impugned show cause notice as well as the order are required to be quashed and set aside on the ground of violation of principles of natural justice, and the matter is required to be remanded back. Furthermore, he has submitted that the appellate order also travels beyond the show cause notice, and the same also requires to be set aside.

3. The petitioner is a partnership firm and deals with business of sale of brass, copper and other metal scrap and was issued the show cause notice vide an email dated 10.11.2022 proposing to cancel the registration certificate. Perusal of the show cause notice dated 10.11.2022 shows that registration of the petitioner is sought to be cancelled on the ground that the registration was obtained by fraud, wilful misstatement, and suppression of facts, and the petitioners were asked to appear before the authority on 18.11.2022 at 13 :00 hours.

4. It appears that thereafter, the petitioner Company informed the authority that it would produce all the documents in support of their transactions and the evidence relating to the availment of Input Tax Credit (for short 'ITC'), within a period of 15 to 20 days. However, by the impugned order dated 22.11.2022, the authority cancelled the registration certificate of the petitioners with retrospective effect from 24.06.2020. The petitioners thereafter filed an Appeal against the order cancelling registration under Section 107 of the GST Act, and the

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petitioners also filed an application for revocation of cancellation of registration certificate on 11.02.2023.

5. Pending the Appeal by the order dated 13.04.2023, the application for revocation of cancellation was rejected for the reason that the petitioners had purchased the goods from the traders, who had *suo motu* cancelled their registration. Prior to passing of the order the petitioners were granted 07 days time to pay tax, interest and penalty on GST DRC-03.

6. The petitioners again filed an Appeal under Section 107 of the GST Act seeking restoration of registration certificate. It appears that the appellate authority sought report from the jurisdictional officer, which filed a negative report and forwarded to the appellate authority. It is the case of the petitioners that the report of the officer contained new grounds, which were never present in the original show cause notice, as well as the notice rejecting revocation application.

7. The petitioners filed detailed written submissions and contested the Appeal on merits. However, by the impugned order dated 04.05.2024, the appellate authority rejected the Appeal, which has constrained the petitioners to file the writ petition.

8. Learned advocate Mr.Uchit Sheth at the outset has submitted that the impugned orders may be quashed and set aside and matter may be remanded as the respondents have not followed the statutory provisions in the entire proceedings. It is submitted that the initial order of cancellation of registration itself mentions the fact of the petitioners having taken time

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to produce the evidence, however, without waiting for the time sought by the petitioners for 15 or 20 days, the impugned order has been passed. Thus, it is urged that the same is in violation of principles of natural justice, and the respondent authority cannot improve upon its case in the appellate proceedings by considering the facts which were beyond the scope of the original show cause notice.

8.1 In support of his submission, learned advocate Mr.Uchit Sheth has placed reliance on the judgment of this Court in case of *Arshil Enterprise Vs. State of Gujarat*, Tax Appeal No.952 of 2017, decided on 11.12.2019. It is submitted that in the application dealing with the revocation of cancellation of registration, the authority has demanded the ITC claimed by the vendors, which could not have been done as the petitioners cannot be made liable for any default on the parts of vendors, and no show cause notice was served questioning the claim of input tax credit of three vendors as referred in the impugned order. Thus, it is submitted that on this count also the impugned order is required to be quashed and set aside.

9. In response to the foregoing submissions and opposing the present petition, learned AGP Ms.Tanushree Shrimal has urged that the impugned show cause notice as well as the order may not be quashed and set aside as the same are precisely passed.

9.1 She has submitted that looking to the bogus availment of the ITC, the authorities have cancelled the registration with retrospective effect as it was found from spot verification from the business premises of the

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petitioners that the same had been closed. She has submitted that upon verification of GSTR-2A details of purchases from cancelled dealers, the petitioners were issued the show cause notice dated 10.11.2022 as to why the registration cannot be cancelled.

9.2 She has submitted that though the petitioners had taken time to file the necessary evidence, nothing was done, and since the petitioners did not appear in personal hearing, the cancellation of registration order was passed on 22.11.2022.

9.3 She has further submitted that the appellate authorities have verified the genuineness of the dealers with whom the petitioners have dealt with, and as per the provision of Section 107(11) of the GST Act, it is always open for the appellate authority to further hold the inquiry, and accordingly, petitioners were also offered the opportunity after calling upon the report from the jurisdictional officer. She has submitted that the remedy of filing an application before the Goods and Services Tax Appellate Tribunal is also available. Thus, it is urged that the petition may not be entertained. In the alternate, she has submitted that in case this Court is desirous of setting aside the impugned order, the matter may be remanded to the respondent authorities to decide it afresh.

10. We have heard the learned advocates appearing for the respective parties at length. After hearing the learned advocates for the respective parties, as well as on examination of the impugned order and the pleadings, we are of the opinion that the impugned show cause notice and the appellate order are required to be quashed and set aside, and the matter is required to be remanded to the respondent authorities.

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11. It is not in dispute that vide show cause notice dated 10.11.2022, in form GST REG-17/31, which was sent through email, the petitioners were called upon as to why their GST registration cannot be cancelled, as the registration has been obtained "by means of fraud, wilful misstatement or suppression of facts". Thus, the show cause notice specifically mentions that the initial registration of the petitioners has been obtained by means of fraud, wilful misstatement or suppression of facts. The petitioners were directed to appear before the authority on 18.11.2022 at 13:00 hours, and the registration was suspended with effect from the date of issuance of show cause notice, i.e. 10.11.2022.

12. It appears that the petitioners requested 15 to 20 days time to produce documentary evidence such as purchase bills, sales bills, e-way bills, transportation evidences, fastag evidences. This fact of seeking time and production of documentary evidence is specifically recorded in the order dated 22.11.2022 passed by the respondent authority by which the registration certificate of the petitioners has been cancelled. Thus, from the impugned order itself, it is established that the petitioners sought 15 to 20 days time for producing the relevant documentary evidence. However, there is no decision is placed on record dealing with the request made by the petitioners for production of documents as to whether the same has been entertained or rejected. The impugned order is passed on 22.11.2022 within a period of 12 days after issuance of show cause notice. There is no whisper in the impugned order whether the request of the petitioners was acceded or not. The respondent authority thereafter proceeded to pass the order cancelling the registration with retrospective effect. Thus, we find that the impugned order is liable to be quashed and set aside since it

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neither deal with the request made by the petitioners, nor there is any decision taken to extend the time or giving an opportunity to the petitioners to produce the documentary evidence, and it is passed bereft of any documentary evidence which the petitioners were seeking to produce within a period of 15 and 20 days in support of their claim of ITC.

13. Pertinently, the petitioners filed an Appeal against the said order and also filed an application for revocation of cancellation of registration. The respondent authority issued a show cause notice in the rejection of application for revocation of cancellation of registration on 07.03.2023. In the said application, the petitioners were asked to pay tax, interest and penalty in form GST DRC-03. Since the petitioners did not deposit the amount of tax and penalty through form GST DRC-03, the application for revocation of cancellation of registration was rejected by the authority. The order dated 13.04.2023 by which the application was rejected is premised on the ground that the petitioners had made purchases from three dealers who had *suo motu* cancelled their registration. Unquestionably, the petitioners were never issued show cause notice on this aspect about purchases made from three dealers who had cancelled their registration *suo motu*. By recording this fact that the petitioners had made purchases from three non-existent entities, it is held that the same would amount to obtaining the registration by means of fraud, wilful misstatement or suppression of facts.

14. The order does not reflect that at what date the three entities mentioned therein had sought for *suo motu* cancellation of registration, whether it was at the time of issuance of registration to the petitioners or

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thereafter. It was necessary for the authority to examine the facts after hearing the petitioner since the initial show cause notice issued to the petitioners categorically mentions that the petitioners have obtained the registration by means of fraud, wilful misstatement or suppression of facts. Thus, by deciding the application of the petitioners for revocation of cancellation the respondent authority has asked the petitioners to pay the tax, interest and penalty, which is impermissible as the proceedings, while deciding such application for revocation of cancellation would fall in different domain, and hence the respondents cannot interject this proceeding with the proceedings of Sections 73 and 74 of the GST Act, which deal with the fraudulent availment of the ITC, suppression of facts, etc., and on this ground, the order of rejection of application for revocation of cancellation is also required to be quashed and set aside.

15. Similarly, the appellate order also suffers from the same infirmity, and the appellate authority has tried to improve upon the original defect which was found in the order dated 22.11.2022, as the petitioners were not granted opportunity to produce the documentary evidence in support of his case. Thus, the respondents on one hand had demanded payment of tax and penalty, whereas simultaneously by passing of the impugned order with retrospective effect, the registration of the petitioners has been cancelled, resulting into complete closure of the business. The petitioners cannot be asked to deposit the penalty and tax through GST DRC-03 which is voluntary, without issuing any show cause notice for disallowing the input tax credit at the hands of the petitioners, hence the order suffers from non-application of mind. Thus, the entire action right from the beginning is an exercise amalgamating different statutory provisions

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governing the cancellation of registration and disallowing the input tax credit and simultaneously asking the petitioners to pay the tax and penalty, and hence in such circumstances and undisputed facts, the petitioners cannot be relegated to avail the remedy of filing an application before the Tribunal. Hence, the present petition succeeds, the impugned order dated 04.05.2024 including the show cause notice dated 10.11.2022 are quashed and set aside,. However, we reserve liberty in favour of the respondent Department to initiate fresh proceedings against the petitioners by issuing appropriate show cause notice. We direct that the petitioners shall fully cooperate with the respondent authority. After hearing the petitioners and in compliance of the principles of natural justice, the respondent authority shall pass fresh orders. The entire exercise shall be completed within a period of three months. We clarify that all the contentions of the respective parties are left open and we have not examined the matter on merits.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI,J)

K.K. SAIYED/16

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