Case Citation: (2026) taxcode.in 1664 HC
JUDGMENT DATED: 29/09/2026

NEUTRAL CITATION
2026:GUJHC:62572-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3617 of 2026
FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI sd/-

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Approved for Reporting	Yes	No
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ZODIAC ENERGY LTD.
Versus
STATE OF GUJARAT

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Appearance:
MR SAURABH SOPARKAR SENIOR ADVOCATE for MR MAHARSHI V PATEL(6548) for the Petitioner(s) No. 1
MR RAJ TANNA AGP for the Respondent(s) No. 1

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

Date : 29/09/2026

ORAL JUDGMENT

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

1. By this writ petition the petitioner-Company is assailing the impugned Notice dated 30.06.2025 under Section 74 of the Gujarat Goods and Services Tax Act, 2017 (for short 'GGST Act') and the order dated 24.12.2025 passed in Form GST DRC-07 by the respondent-authority under the provision of Section 74(5) of the Central Goods and Services Tax Act, 2017 (for short "CGST Act") read with Rule 142(1) of the Gujarat Value Added Tax Rules, 2017 (for short 'the Rules').

BRIEF FACTS OF THE CASE

2. The petitioner is engaged in the business of supply and installation of Solar Power Generating System. The petitioner accepts the composite contract of supply and installation of Solar Power Generating System. The respondent authority enacted the GGST Act and the same was made applicable to the

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dealers located within the State of Gujarat w.e.f 01.07.2017. The petitioner since inception accepted the orders and based on the terms and conditions has collected the GST and deposited in the credit of the respondent-authority.

2.1 The respondent-authority in exercise of its powers vested under the GST Act, had issued a Notification no. 24/2018-Central Tax (Rate) on 31.12.2018. In the said notification, an explanation to entry no. 234 subsequently inserted and took a view that the transactions undertaken by the petitioner prior to 01.01.2019 were liable to be treated as "works contract" as specified under Section 2(119) of the GGST Act.

2.2 For the Assessment Year (A.Y) 2017-18, the petitioner received a communication dated 19.10.2020 from the respondent stating to classify its activities as "works contracts" alleging avoidance of tax. The petitioner thereafter sent a detailed reply to the respondent authority on 03.12.2020. The petitioner challenged the said communication dated 19.10.2020 and instituted Special Civil Application No. 6274 of 2021, which came to be subsequently withdrawn. The respondent-authority thereafter issued notice in Form GST DRC -01A dated 01.08.2024 and on 05.08.2024 for A.Y 2017- 18. A request made by the petitioner vide communication dated 02.08.2024 with respect to AY 2017-18, the petitioner had requested time to respond to the notice dated 01.08.2024.

2.3 The petitioner filed Special Civil Application No.13397 of 2024 challenging the notice dated 05.08.2024, whereby the impugned Show cause notice and subsequent order were quashed and set aside. The respondent-authority had further

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proceeded with adjudication of impugned notice dated 30.06.2025 under Form GST DRC-01 for A.Y 2018-19. Hence, the present writ petition.

SUBMISSIONS ON BEHALF OF PETITIONER

3. Learned Senior Advocate Mr. Soparkar has submitted that the respondent-authority while issuing the impugned notice dated 30.06.2025 for F.Y 2018-19 as well as order dated 24.12.2025 has completely ignored the observations made by this Court in the Judgment and Order dated 17.07.2025 passed in Special Civil Application No. 13397 of 2024 with respect to notice under Section 74 of the CGST Act. This Court vide aforesaid judgment has held that the notice issued under Section 74(5) of the GGST Act read with Rule 142(1) of the Rules, does not reflect any fraud, willful misstatement or suppression of facts on the part of the petitioner.

3.1 It is submitted that the respondent-authority has failed to appreciate the binding Circular No.47/21/2018-GST dated 08.06.2018, wherein at paragraph no.2, clearly states that where the supply involve supply of both goods and services so supplied are shown separately then the goods and services would be liable to be taxed at the rate as applicable to such goods and services separately. It is submitted that the petitioner has shown the details of goods and supply separately in the invoices that are being raised on its client, hence, as per the Circular dated 08.06.2018, the goods are to be taxed at the rate of 5% and the supply are to be taxed at the rate of 18%. It is submitted that the petitioner has not collected tax at the rate of 18% on its business transactions and therefore there is no question of unjust

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enrichment. since the inception of the Gujarat Goods and Services Tax Act, 2017, with effect from 01.07.2017, it was clear that the activities relating to Solar Power Generating Systems would attract tax at the rate of 5%.

3.2 It is further submitted that the petitioner is engaged in the business of renewable energy and that, in order to enable such business activities flourish, when the government allows the petitioner to carry on its business on payment of the subsidized rate of tax. Thus, the respondent-authority cannot seek to rely upon the aforesaid clarification by treating it as applicable with effect from 01.07.2017, when, in fact, the notification dated 31.12.2018 itself came into effect only from 01.01.2019.

SUBMISSIONS ON BEHALF OF THE RESPONDENT :

4. While opposing the foregoing submissions and the present writ petition, learned AGP Mr.Tanna appearing for the respondent has submitted that the impugned orders are of financial year 2018-19, and during scrutiny of the returns, it was found that the petitioner had discharged its output tax liability at the rate of 5%, however, considering the nature of the petitioner's business and the nature of the supplies of the goods along with installation services, the petitioners sole purpose of purchasing solar based product in not only supply of goods, but also involved commissioning, installation and testing of the components. In such circumstances, relying upon the notifications and circulars issued by the Central Board of Indirect Tax and Customs (CBIC), the value of such supply was required to be proportioned in the ratio of 70:30, i.e. 70% towards goods and 30% towards services.

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5. Learned AGP has invited our attention to the GST Scheme regulating the levy of tax structure of Solar Power generating system. Reference is made to Serial No.234 in Chapter 84 and 85, which was introduced on the promulgation of GST regime on 01.07.2017, and levy of 5% tax. It is contended that subsequently vide Notification No.11/2017 dated 28.06.2017 was issued and at Serial No.38 under Chapter Heading 9954, 9983 and 9987 for the similar categories like Solar Power System, 18% tax rate was prescribed, and under the Explanation it was clarified that these entries shall be read in conjunction with serial number 234 of Schedule 1 of Notification No.01/2017 dated 28.06.2017. It is submitted that, thereafter, vide Notification No.24/2018 dated 31.12.2018, another Explanation was introduced, against Sr.No.234 splitting the tax values between goods and services to the extent of 70:30 ratio. It is contended that thereafter, the Entry No.234 was omitted vide Notification No.8/2021 dated 30.09.2021 and it was substituted by Entry No.201A w.e.f. 01.01.2021, and the same also contained similar Explanation prescribing 70:30 ratio. Learned AGP has also further pointed out the Circular No.163/19/2021-GST dated 06.10.2021 clarifying the GST rates on Solar Power projects, which prescribes imposing of tax in terms of 70:30 ratio for the period of 01.07.2017 to 31.12.2018, in the same manner which is prescribed earlier. Thus, it is contended that right from the beginning the intention of the GST regime was to impose the tax in the ratio of 70:30 for composite supply of goods and services like the Solar Power system, and since the petitioner has not challenged the aforesaid Circular, the impugned action of the respondent in invoking the provision of Section 74 of the Act is justified.

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ANALYSIS & OPINION :

6. After hearing learned advocates appearing for the respective parties, we are of the opinion that the impugned show-cause notice as well as the order are required to be quashed and set aside as the same travel beyond the scope of the provision of Section 74 of the CGST Act, more particularly, in light of the item no.234 in the Chapter 84 and 85 having description of goods wherein 5% tax rates were mentioned in the GST Law which was implemented on 01.07.2017. One of such items covered under the said entry is the solar power generating system in which the present petitioner is dealing.

7. After introduction of 5% tax rates in Schedule-I of Notification No.01/2017 dated 28.06.2017 on Solar Power projects, which consist of composite supply, the finance department, subsequently, vide notification no. 11/2017 Central tax dated 28.06.2017 at Serial No.38 under Chapter Heading 9954 or 9983 or 9987 for the similar categories like Solar Power System, prescribed 18% tax rate was prescribed, and under the Explanation it was clarified that these entries shall be read in conjunction with serial number 234 of Schedule 1 of Notification No.01/2017 dated 28.06.2017. Thereafter, vide Notification No.24/2018 dated 31.12.2018, another Explanation was introduced, against Sr.No.234 splitting the tax values between goods and services to the extent of 70:30 ratio w.e.f 01.01.2019. Thus, for the first time w.e.f 01.01.2019, the splitting of tax rates in the ratio of 70:30 for composite supply of goods and service for Solar Power project was introduced. Till then there was no issue with regard to the alleged misrepresentation or suppression of facts at the end of the

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petitioner, however, by the impugned notices and impugned order the petitioner has been roped in for alleged violation of payment of the tax liability in the ratio of 70:30 i.e. 70% of goods and 30% services.

8. The tax rates as per 70:30 ratio for goods and services was prescribed for the first time by the notification No. 24/2018 Central Tax (Rate) dated 31.12.2018 w.e.f 01.01.2019. the relevant portion reads thus:

> *"Thereafter, the Notification dated 24/2018 Central Tax (Rate) dated 31.12.2018 w.e.f 01.01.2019 was introduced and the relevant is reproduced as below:*
>
> *"Against S.No. 234, in the entry in column (3), the following explanation shall be inserted in the end namely:-*
>
> *Explanation: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S.No. 38 of the table mentioned in the notification no. 11/2017 -Central Tax (Rate) dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy percent, of the gross consideration charged for all such supplies and the remaining thirty percent of the gross consideration charged shall be deemed as value of the said taxable service."*

9. It appears that subsequently, vide Notification No 8/2021 dated 30.09.2021, which was made effective from 01.10.2021 a new entry no. 201A in schedule II was introduced by omitting the entry no. 234, which relates to solar power projects etc. the same also contained similar explanation which was in the Notification dated 31.12.2018. It appears that pursuant to the

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queries raised by the dealers relating to the applicability of the rates at the ratio of 70:30 as prescribed in earlier notification and after the meeting which was conducted by the GST Counsel, the Government issued a Circular no. 163/19/2021- GST dated 06.10.2021 clarifying that the GST on the renewable energy projects can be paid in terms of 70:30 ratio for goods and services, respectively, for the period from 01.07.2017 to 31.12.2018, in the same manner which has been prescribed for the period on or after 01.01.2019 as per the explanation under Notification No.12/24/2018 dated 31.12.2018.

10. By invoking the aforementioned provisions regulating the goods and services tax in the ratio of 70:30, the GST authority issued show cause notice to the petitioner in Form GST DRC-01 on 30.06.2025 and ultimately passed the impugned order in GST DRC-07. The Show cause Notice and the impugned order are premised only on the alleged violation of paying the GST at the rate of 70% goods and 30% of services for F.Y 2018-19.

11. A bare reading of the introduction of the rates of goods and services in 70:30 ratio would clarify that the same has been introduced for the first time vide Notification no. 24/2018 dated 31.12.2018 w.e.f 01.01.2019 in the explanation incorporated in the said notification. Subsequently, by the circular dated 06.10.2021 the same is further retrospectively applied for the period from 01.07.2017 to 31.12.2017, in the same manner as been prescribed for the period on or after 01.01.2019 as per the explanation in the Notification no. 24/2018-Central Tax (Rate) dated 31.12.2018.

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12. Thus, we are of the opinion that when the petitioner had raised the invoices and paid the taxes there was no suggestion in the form of explanation to pay taxes in 70:30 ratio for F.Y 2018-19 which would begin from 01.04.2018 to 31.03.2019. In wake of the aforesaid facts, it cannot be said that the ingredients of Section 74 of the CGST Act would get attracted, and the elements like fraud, misrepresentation, suppression of facts can be invoked in the extended period of limitation of five years, since it is the case of the petitioner that it was paying the taxes as regulated by the Notifications issued at the relevant time. It is also not the case of the respondents in the Show Cause notice as well as in the impugned order that the petitioner has violated the payment of taxes as prescribed in the introduction of the GST in the year 2017 and subsequently, as clarified in the notification no. 11/2017 dated 28.06.2017.

13. We are of the opinion that the ingredients of Section 74 of the CGST Act would not get attracted to the tax liability which existed prior to the introduction of the Explanation specifying the payment of tax in ratio of 70:30. The retrospective application of the 70:30 tax ratio under the Explanation—and as clarified by the Circular dated 06.10.2021—does not *ipso facto* establish fraud, suppression, or a deliberate intention to evade tax in case the tax is not paid in such terms. These negative attributes must be evaluated based on the regulatory framework in place at the relevant time. They cannot be automatically inferred from a subsequent tax levy imposed with retrospective effect, but are confined to the regulatory process governing the payment of tax at the relevant time.

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14. Thus, the impugned action of the respondent in invoking the provision of Section 74 of the CGST Act demands interference by this Court. At the same time, we clarify that, it will be open for the respondents to initiate fresh proceedings for analyzing the invoices of the petitioner, to the extent of finding out that, whether the same violates the applicable rates as provided in the aforementioned Notification No.01 dated 28.07.2017 for supply of goods and services. Additionally, we accede to the request made by learned AGP to allow the GST authority to initiate fresh proceedings, if required under the law for the period from 01.01.2019 to 31.03.2019.

15. Accordingly, the impugned notice as well as the order are hereby quashed and set aside, reserving all the rights and contentions of the respective parties, in the subsequent proceedings, if any, are initiated.

sd/-
(A. S. SUPEHIA, J)

sd/-
(VAIBHAVI D. NANAVATI,J)

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