IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 136 of 2026

With
CIVIL APPLICATION (OJ) (FOR STAY) NO. 1 of 2025
In R/TAX APPEAL NO. 136 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE NIRZAR S. DESAI

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
M/S SHIVSHAKTI GINNING AND PRESSING PVT LTD

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Appearance:
MRUNAL DHOLARIA AGP for the Appellant(s) No. 1
HIREN J TRIVEDI(8808) for the Opponent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 12/10/2026

JUDGMENT

(PER : HONOURABLE MR. JUSTICE NIRZAR S. DESAI)

1. Heard learned Assistant Government Pleader Mr.Mrunal Dholaria for the appellant/applicant and learned advocate Mr.Hiren J. Trivedi for the respondent.

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2. By this Appeal under Section 78 of Gujarat Value Added Tax Act, 2003 (for short 'the VAT Act'), the appellant has proposed the following substantial questions of law, arising from the Judgment and Order dated 23.09.2024 passed by the Gujarat Value Added Tax Tribunal, Ahmedabad (for short 'the Tribunal') in Second Appeal No.789 of 2024;

> *"A. Whether the Hon'ble Tribunal has erred in law and in facts in deciding that the demand made by the assessing officer qua the undue C/F ITC by filing TRAN-1 is breach of laws under GST Act and not under the GVAT laws?*
>
> *B. Whether the Hon'ble Tribunal has erred in law and in facts deciding the issue of excess ITC taken by the respondent through Trans-I by applying the law laid down in Cosmos International V/s State of Gujarat?*
>
> *C. Whether the Hon'ble Tribunal has erred in law and in facts considering the judgment of Cosmos international in its true prospective looking to the peculiar facts of the case on hand?*
>
> *D. Any other substantial questions of law as may be deemed fit by the Hon'ble High Court may kindly be framed?*

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3. The brief facts of the case are as under;

3.1. The respondent-assessee is engaged in the business of reselling of Cotton Bales and Khol.

3.2. For the period from 1st April, 2017 to 30th June, 2017, the Assessing Officer disallowed the Input Tax Credit (for short 'the ITC') of Rs.6,78,593/- taken by the respondent under GSTR TRAN-1 without adjusting the tax liability and further levied the interest and penalty raising a demand of Rs.11,16,286/-.

3.3. Being aggrieved by the Assessment Order dated 02.02.2021, the assessee preferred an Appeal before the First Appellate Authority, however, by order dated 27.05.2022, the First Appellate Authority dismissed the Appeal preferred by the assessee on account of non-payment of the pre-deposit.

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3.4. The respondent-assessee therefore filed the Second Appeal before the Tribunal contending, inter alia, that the available ITC with the assessee as per the Assessment Order was Rs.2,87,75,305/- and, therefore, the tax liability of Rs.1,06,05,592/- ought to have been adjusted against the available ITC and the balance ITC of Rs.1,87,14,713/- would be available for carry forward. The Tribunal allowed the Second Appeal and directed the First Appellate Authority to recalculate the tax liability accordingly.

3.5. Reliance was placed on the decision of this Court in case of ***State of Gujarat Versus Cosmos International Limited*** rendered on 20th March, 2015 in Tax Appeal Nos.857 of 2013 and other allied matters.

3.6. It was further contended by the respondent-assessee that the Assessing Officer could not have raised the tax demand on the difference between ITC available to be carried forward and

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the amount of ITC actually claimed under TRAN-1, as such difference is not liable to be considered under the provisions of the VAT Act and if at all, there is a mistake in the carry forward of the ITC on the TRAN-1, it would fall under the provisions of the GST Act and not under the VAT Act.

3.7. Reliance was placed on the decision of ***M/s.Sodhan Textiles Private Limited Versus The State of Gujarat*** rendered by the Tribunal in Second Appeal No.454 of 2022.

3.8. The Tribunal, after considering the submissions regarding the levy of tax on the differential amount, held as under :

> *"We have gone through the submissions of both the parties, from the facts it is clear that appellant has wrongly taken benefit of ITC of Rs.6,78,593/- in TRAN-1. As per the provision of GST Act, the ITC available as on 30/06/2017 is to be credit in TRAN 1. In the present case, ITC available as on 30/06/2017 as per assessment order is Rs.1,87,14,713/- (after adjusting against VAT liability) this will lead to undue claim of ITC in TRAN 1 of Rs.6,78,593/-. In our*

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opinion this may be breach of provision of GST Act, in that matter Government should act as per provision of GST Act. In the present matter instead of acting as per provision of GST Act, officer created tax liability under GVAT Act by not adjusting available ITC against tax demand under the VAT Act which is contrary to provision of GST Act and as per ratio of judgment of Cosmos International, hence we decide that first appellate authority should first adjust VAT liability of VAT tax of Rs.1,06,05,592/- against available ITC of Rs.2,87,75,305/-, this will lead to C/F ITC of Rs. 1,87,14,713/- and VAT tax liability zero, hence first appellate authority directed to recalculate tax liability, Department is free to take any action as per provision of GST Act."

3.9. Thereafter, the Tribunal passed the following order by allowing the Second Appeal in favor of the assessee by directing the Assessing Officer as under ;

*"**ORDER***

A. Second Appeal No.789 of 2024 is hereby allowed.

B. First Appellate Authority is directed to recalculate liability as discussed above.

C. No order of cost.."

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4.1. Learned Assistant Government Pleader Mr. Mrunal Dholaria for the appellant submitted that the Tribunal has committed an error in directing the First Appellate Authority to adjust the VAT liability of Rs.1,06,05,592/- against the available ITC of Rs.2,87,75,305/- as per the Assessment Order and to allow the balance ITC of Rs.1,87,14,713/- to be carried forward. It was submitted that the assessee had wrongly availed excess ITC of Rs.6,78,593/- in TRAN-1, contrary to the provisions of the GST Act, and that the Tribunal ought not to have directed the recalculation of the tax liability in the manner stated in the impugned order.

4.2. In support of his submissions, reliance was placed on the decision of the Co-ordinate Bench of this Court rendered on 29th June, 2026 in case of ***Dilip Babubhai Patel Versus State of Gujarat*** reported in ***[2026] 187 taxmann.com 1063 (Gujarat)*** wherein, in the facts of the case, it was held as under ;

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"63. A holistic reading of the aforesaid provisions cements the intention of the legislature. The legislature unequivocally intended that a registered taxpayer's claim to ITC, spanning both the pre-GST and post-GST regimes, should not be frustrated. However, a clear demarcation exists between the utilization and the refund of ITC. The legislative intent dictates that the GST regime permits the utilization of accumulated ITC from the erstwhile regime for output tax liability only if it is successfully transitioned into the ECL. Conversely, cash payment of accumulated credit from the erstwhile regime is permissible only upon filing a refund claim. Thus, a taxpayer can either seek a refund under the existing laws to be paid in cash under Section 142(3) of the GST Acts, or choose to transit the credit. If the accumulated credit is carried forward, the statutory bar under the second Proviso to Section 142(3) of the GST Acts gets triggered, making refund impermissible. Taxpayers migrating to the GST regime cannot pursue both avenues concurrently or interchangeably. They must choose either receipt of a cash refund of the pre-GST accumulated credit or to transit the balance into the GST regime; if they choose the latter, they forfeit the refund claim but retain the right to utilize the credit. This intent of Section 142(3) is implicit from 1st Proviso, which instructs the lapsing of credit on partial or fully rejection, on the claim of refund of credit under old regime under the main Section 142(3), whereas the 2nd Proviso restricts claim of refund of credit, if the credit is transitioned. The petitioner cannot claim refund of credit under the

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provisions of old regime, on transitioning of the credit. Such claim is restricted only under Section 143(3) and rejection/allowance of credit claimed under Section 143(3) is governed by 1st proviso. Merely because the transit/transfer is permitted by TRAN-1 to GST regime, such transfer of credit will not ipso facto make the credit worthy of refund under Section 54(3). The legislature has introduced an exclusive Chapter regulating transition of credit from former regime to GST. Ultimately, Section 142(3) of the GST is a check to ensure a taxpayer does not claim a refund of the erstwhile regime once that credit has been carried forward and transitioned into the GST framework. The petitioner cannot insist on refund of transitioned GST de hors the statute."

4.3. Referring to the above decision, it was submitted that this Court, considering the provisions of Sections of the GST Act, has held that merely because the transit/transfer is permitted by TRAN-1 to GST regime, such transfer of credit will not ipso facto make the credit worthy of refund under Section 54(3) of the GST Act and the legislature has introduced an exclusive Chapter regulating the transition of credit from former regimes to GST and provisions of Section 142(3) of the

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GST Act is a check to ensure the taxpayer does not claim a refund of the erstwhile regime once the credit has been carried forward and transitioned into the GST framework. It was therefore submitted that the Assessing Officer was justified in considering the amount of ITC carried forward by the assessee under the GST regime to deny the set off of the tax liability and to tax on the differential amount of ITC which was not available to the assessee to be carried forward.

4.4. Further, reliance was placed on the decision of the Hon'ble High Court of Jharkhand in case ***Usha Martin Ltd. Versus Additional Commissioner, Central GST and Excise*** reported in ***[2022] 145 taxmann.com 224 (Jharkhand)*** wherein, it is held by the Hon'ble Jharkhand High Court in the facts of the case as under;

> *"21. It provides that the repeal of the existing laws shall not affect any investigation, inquiry, verification (including Scrutiny and audit, assessment proceedings, adjudication and any other legal proceedings or*

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recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment as aforesaid and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed. In substance, investigations, inquiry, verification, assessment proceedings, adjudication proceedings, legal proceedings which were for recovery of arrears or remedy in respect of any such duty or tax etc., which were pending or such other legal proceedings or inchoate rights which were in existence on the appointed day, for them legal proceedings may be instituted, continued or enforced as if these Acts had not been so amended or repealed. To decide whether any particular transaction is affected by the repeal of an Act, it is necessary to ascertain whether the transaction in question was completed when the Act was repealed. The present repeal and saving clause expressly engrafts that notwithstanding the repealing Act the repeal shall not affect any right or liability acquired accrued or incurred. In this regard it is appropriate to rely upon the opinion of the Apex Court as rendered in the case of Mangilal Pindwal (supra) as under :

"9. As pointed out by this Court, the process of a

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substitution of statutory provision consists of two steps; first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. (See: Koteswar Vittal Kamath v. K. Rangappa Baliga & Co. [(1969) 1 SCC 255 : (1969) 3 SCR 40] , SCR at p. 48) In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in Sutherland on Statutory Construction:

'The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribe the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed act in futuro and to divest the right to proceed under the statute, which, except as to proceedings past and closed, is considered as if it had never existed." (Vol. I, para 2042, pp. 522-523)

10. Similarly in Crawford's Interpretation of Laws it has been said:

"Effect of Repeal, Generally.— In the first place, an outright repeal will destroy the effectiveness of the repealed act in futuro and operate to destroy inchoate rights dependent on it, as a general rule. In many cases, however, where statutes are repealed, they continue to be. the law of the

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period during which they were in force with reference to numerous matters." (pp. 640-641)

11. The observations of Lord Tenterden and Tindal, C.J. referred in the above-mentioned passages in Craies on Statute Law also indicate that the principle that on repeal a statute is obliterated is subject to the exception that it exists in respect of transactions past and closed. To the same effect is the law laid down by this Court. (See: Qudrat Ullah v. Municipal Board (1974) 1 SCC 202 : (1974) 2 SCR 530], SCR at p. 539)"

22. Therefore, it is clear that the repeal of the existing laws upon coming of the G.S.T. law regime did nor leave a vacuum as to past transactions which were not closed. The repeal and saving clause (e) under section 174(1) of the C.G.S.T. Act allowed such legal proceedings to be instituted in respect of inchoate rights except rights under transactions which were past and closed. Petitioners also admit that proceedings for availing CENVAT Credit which were allegedly inadmissible under the C.E.A., Finance Act, read with C.C.R., 2004 could have been initiated under the existing laws. It is also not in dispute that in respect of previous proceedings for such contravention the cases have been kept in call book and in some of them the leamed CESTAT has stayed the recovery of the tax. The duty of the constitutional courts is to interpret the law and also to ensure that there is

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certainty about the law not only in the minds of the law enforcement agencies but also in the common person as to where he stands in the eye of law. If proceedings for transition of CENVAT Credit alleged to be inadmissible is permitted to be carried under the C.G.S.T. Act, it may lead to uncertainty not only in the minds of the ordinary citizen but also in the minds of the Tax authorities. In some cases a jurisdictional proper officer under the C.G.S.T. Act may initiate proceedings under the provisions of the C.G.S.T Act for such contravention. In other cases the competent jurisdictional officer may initiate proceedings under the existing law that is the C.E.A. and Finance Act for the same contravention in view of the repeal and saving provisions under section 174 of the C.G.S.T. Act. Such a course cannot be countenanced in law. As such, we are of the considered view that the initiation of proceedings by respondent no. 1 under section 73(1) of the C.G.S.T. Act, 2017 for alleged contravention of the C.E.A. and Finance Act, read with C.C.R. against the petitioner by filing TRAN 1 in terms of Section 140 of the C.G.S.T. Act for transition of CENVET Credit as being inadmissible under the existing law was beyond his jurisdiction. Consequently the Order in Original dated 30th March, 2022 passed by the respondent no. 1 being without jurisdiction cannot be sustained in the eye of law. The impugned adjudication proceedings and the order in original dated 30th March, 2022 are accordingly quashed.

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4.5. Referring to the above decision of the Hon'ble Jharkhand High Court, it was submitted that the repeal of the existing law upon coming into force of the GST law regime would not lead a vacuum to the past transactions which are not closed and accordingly, it was submitted that once the assessee has carried forward the ITC under TRAN-1 in the GST regime, the Assessing Officer was justified in considering the same for framing the assessment for the period prior to 31st March 2017.

4.6. With regard to the reliance placed on the decision in case of ***M/s.Sodhan Textiles Private Limited (Supra)*** by the assessee, it was submitted that in the facts of the said case, the issue was with regard to the carry forward of the stock and not the carry forward of the ITC on stock and therefore, reliance placed by the assessee and accepted by the Tribunal is misplaced in the facts of the present case wherein, the Assessing Officer was justified in relying upon the carry forward of the ITC shown in the TRAN-1 by the assessee.

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5. Having heard the learned advocates for both the sides, it appears that it is not in dispute that, as recorded by the Assessing Officer, there was an available ITC of Rs.2,87,75,305/- and tax was payable under the GVAT Act of Rs.1,06,05,592/-. Therefore, the Tribunal was justified in permitting the set-off of the tax payable against the ITC available to the assessee and directing the First Appellate Authority to adjust the same against the available ITC and further directing that the remaining ITC available, to be carried forward to the next financial year, relying upon the decision in the case of ***Cosmos International (supra).***

6. With regard to the contention raised on behalf of the appellant that the Assessing Officer was justified in considering the ITC carried forward in TRAN-1 under the GST regime, it would be germane to refer to the Rule 117 of the GST Rules, 2017 (for short 'the GST Rules') which provides for transitional

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provision for tax or duty credit for carry forward under any existing law or on goods held in stock on the appointed day.

7. Sub-rule (3) of Rule 117 of the GST Rules provides that the amount of credit specified in application in FORM GST TRAN-1 can be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on a common portal.

8. Further, Rule 121 of the GST Rules provides that before the credit is wrongly availed, if the GST Department finds that, the amount credited under Sub-rule (3) of Rule 117 of the GST Rules may be verified, the provisions of Sections 73 or 74 of the GST Act, as the case may be, be initiated in respect of any credit wrongly availed, whether wholly or partly. Therefore, we are of the opinion that the Assessing Officer, in the facts of the case, ought to have informed the concerned GST Department for the amount of credit, which

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was not available to the assessee of Rs.6,78,593/- as against available credit of Rs.1,87,14,713/- and the assessee was entitled to the credit of only Rs.1,87,14,713/- as observed by the Tribunal.

9. Therefore, we are in complete agreement with the case law cited by the learned Assistant Government Pleader, however, the same would not be applicable in the facts of the case as it would be for the GST Department to take actions under provisions of Rule 121 of the GST Rules for wrong ITC, if any, availed by the assessee by way of TRAN-1 and the only remedy available to the VAT Department is to inform the concerned GST Officer regarding such facts coming to the knowledge of the Department of availing wrong ITC, if any, by the assessee.

10. However, we are of the opinion that the Tribunal was justified under the provisions of the VAT Act that the assessee

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was entitled to set off of the tax payable against the available ITC and therefore, in our opinion, there is no infirmity in the impugned order of the Tribunal and as such, no question of law, much less any substantial question of law arises from the impugned order of the Tribunal and the Appeal is accordingly dismissed.

11. The Civil Application also stands disposed of in view of the dismissal of the Appeal.

(BHARGAV D. KARIA, J)

(NIRZAR S. DESAI,J)

BHAVIN MEHTA

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