Case Citation: (2026) taxcode.in 1717 HC
JUDGMENT DATED: 16/10/2026

NEUTRAL CITATION
2026:GUJHC:67116-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15783 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 16075 of 2024

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

==========

Approved for Reporting	Yes	No
		✔

==========

M/S DEEPAK NITRITE LTD.
Versus
UNION OF INDIA & ORS.

==========

Appearance:
MR MIHIR JOSHI, SENIOR ADVOCATE with MR ANAND NAINAWATI(5970) for the Petitioner(s) No. 1
MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 1,2,3

==========

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

Date : 16/10/2026
COMMON ORAL JUDGMENT
(PER : HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI)

1. Rule returnable forthwith. Mr. Utkarsh Sharma, learned Senior Standing Counsel waives service of notice of rule for and on behalf of the respondents.

2. Since a common issue is involved in the captioned writ petitions, the same are heard and decided analogously by this common judgment and order. The writ petition being Special Civil Application No.15783 of 2024 is taken up as a lead matter.

3. By way of captioned writ petition, the petitioner has

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Oct 24 11:05:06 IST 2026

challenged the impugned show cause notice bearing No.VAD-I/Prev/SCN/202/Gr.E/Deepak/2023-24, dated 22.03.2024 issued by the respondent No.3.

4. Briefly stated that, Deepak Fertilizers and Petrochemicals Corporation Limited is allotted with an industrial plot on lease by Gujarat Industrial Development Corporation (GIDC) bearing plot No.D-II/6/1 and D-II/6/1A, admeasuring about 5,11,274.41 sq. mtrs. situated in Industrial Phase, GIDC Industrial Estate, Dahej-2 (Rahiyad Village), Tahsil – Vagra, District : Bharuch, Gujarat (for short 'subject land'). The petitioner wants to acquire entire plot of land and the lease hold rights from M/s.Deepak Fertilizers and Petrochemicals Corporation Ltd.. The petitioner accordingly approached M/s.Deepak Fertilizers and Petrochemicals Corporation Ltd. to grant leasehold rights to the petitioner in respect of the subject land. Upon request of the petitioner and subject to the approval of GIDC on 23.09.2019, the petitioner entered into the Memorandum of Understanding (MOU) with M/s. Deepak Fertilizers and Petrochemicals Corporation Limited for acquiring leasehold rights with respect to the subject land and the same came to be assigned to the petitioner for consideration of Rs.117,10,96,900/- having taxable value of Rs.99,24,55,000/- and GST of Rs.17,86,41,900/-.

4.1 During the period 2021-22, the wholly owned subsidiary of the petitioner, M/s. Deepak Chem Tech Ltd., was in the need of parcel of industrial land for setting up projects. Accordingly, upon such request, the petitioner by e-invoice dated 03.01.2022 assigned leasehold rights of the subject land to

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Oct 24 11:05:06 IST 2026

M/s.Deepak Chem Tech Ltd. for consideration of Rs.150,91,42,295/-. The petitioner has duly collected the GST amounting to Rs.23,02,08,146/- from M/s.Deepak Chem Tech Ltd. and deposited the said amount of GST to the Government Exchequer at the time of filing of Form GSTR 3B for the month of December, 2021.

4.2 Upon information gathered and developed by the respondents alleging that the Input Tax Credit (ITC) was availed by the petitioner for acquiring leasehold rights over and above the immovable property appeared to be inadmissible and the same was liable for recovery as provided under the provisions of Central Goods and Services Tax Act, 2017 (for short 'CGST Act') and the rules made thereunder. Based on the information, an inquiry came to be initiated against the petitioner, which resulted into issuance of show cause notice dated 22.03.2024 by the respondent No.3 asking the petitioner to show cause as to why the ITC amounting to Rs.17,86,41,900/- wrongly availed by the petitioner, should not be demanded from the petitioner under the provisions of section 74 of the CGST Act read with corresponding section of the Gujarat Goods and Services Tax Act, 2017 (for short 'the GGST Act'). The aforesaid has given rise to the filing of the present petition.

5. Mr. Mihir Joshi, learned Senior Advocate appearing for the petitioner, at the outset, submitted that the issued involved in the present petition is squarely covered by the decision of this Court in the case of *Gujarat Chamber of Commerce and Industry & Ors. Vs. Union of India & Ors., (2025) 170 taxmann.com, 251 (Guj.)* and the decision rendered in Special

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Oct 24 11:05:06 IST 2026

Civil Application No.6623 of 2026, dated 03.09.2026.

6. Mr.Utkarsh Sharma, learned Senior Standing Counsel appearing for the respondents is not in a position to dispute the aforesaid settled position of law, as referred to by Mr.Mihir Joshi, learned Senior Advocate appearing for the petitioner.

7. We have heard the learned advocates appearing for the respective parties at length. It is not in dispute that the petitioner herein assigned leasehold rights in an industrial plot by Gujarat Industrial Development Corporation (GIDC) bearing plot No.D-II/6/1 and D-II/6/1A, admeasuring about 5,11,274.41 sq. mtrs. situated in Industrial Phase, GIDC Industrial Estate, Dahej-2 (Rahiyad Village), Tahsil – Vagra, District : Bharuch, Gujarat, for consideration of Rs.117,10,96,900/- having taxable value of Rs.99,24,55,000/- and GST of Rs.17,86,41,900/- on 01.08.2021. The petitioner duly collected the GST amounting to Rs.23,02,08,146/- from M/s.Deepak Chem Tech Ltd. and duly deposited the said amount of GST to the Government Exchequer at the time of filing of Form GSTR 3B for the month of December, 2021.

7.1 Upon information gathered by the respondents, an inquiry and investigation was initiated against the petitioner and based on the same, it was alleged that the ITC availed by the petitioner on the leasehold services received during the period for construction of immovable property is blocked credit under section 17(5)(d) of the CGST Act. The respondent No.3 issued the impugned show cause notice dated 22.03.2024 asking the petitioner to show cause as to why the ITC

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Oct 24 11:05:06 IST 2026

amounting to Rs.17,86,41,900/- wrongly availed by the petitioner, should not be demanded from the petitioner under the provision of Section 74 of the CGST Act read with corresponding section of the GGST Act.

8. The aforesaid issue is no longer *res-integra* in view of the decision rendered by this Court in Special Civil Application No.6623 of 2023, dated 03.09.2026, wherein, this Court after considering the decisions rendered in the case of ***Gujarat Chamber of Commerce and Industry & Ors. (Supra)*** and ***Special Civil Application No.18068 of 2025***, has observed thus:

> *"7. Considering the aforesaid, the core issue pertains to ITC availed by the petitioner on acquisition of leasehold rights of GIDC plot. This Court in the case of* ***Gujarat Chamber of Commerce and Industry & Ors. (Supra),*** *has held that the assignment by sale or transfer of the leasehold rights of the plot allotted by the GIDC to the lessee in favour of the third party-assignee for a consideration shall be assignment/sale/transfer of benefits arising out of "immovable property" by the lessee-assignor in favour of third party-assignee, who would become lessee of GIDC in place of original allottee-lessee. Under such circumstances, provisions of section 7(1)(a) of the CGST Act providing for scope of supply read with clause 5(b) of Schedule II and clause 5 of Schedule III shall not be applicable to such transaction of assignment of leasehold rights of land and building and the same would not be subject to levy of GST as provided under section 9 of the CGST Act. The Coordinate Bench of this Court after extensive scrutiny of the provision of the GST as well as the array of judgments has ultimately declared as under :-*
>
> > *"83. In view of foregoing reasons, assignment by sale and transfer of leasehold rights of the plot of land allotted by GIDC to the lessee in favour of third party-assignee for a consideration shall be assignment/sale/ transfer of benefits arising out of "immovable property" by the lessee-assignor in favour of third party-assignee who would become lessee of GIDC in place of original allottee-lessee. In such circumstances, provisions of section 7(1)(a) of the GST Act providing for scope of supply read with clause 5(b) of Schedule II and Clause 5 of Schedule III would not be applicable to such transaction of assignment of leasehold rights of land and building and same would not be subject to levy of GST as provided under section 9 of the GST Act.*
> >
> > *84. In view of above, question of utilisation of input tax credit to discharge the liability of GST on such transaction of assignment would not arise.*

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Oct 24 11:05:06 IST 2026

85. The petitions accordingly succeed and impugned show cause notices and orders in original or appeal as the case may be, are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs."

7.1. In the facts of the present case, admittedly, the petitioner acquired leasehold rights in the industrial plot allotted by the GIDC from M/S. MYSPACE INFRACON. In view thereof, the GST charged by the supplier and paid by the petitioner was contrary to the law. When the charging provision itself does not apply, any amount collected or retained by the department, whether directly as tax or indirectly by way of ITC reversal and interest, has no legal sanctity.

7.2 Considering the aforesaid, the reversal of ITC and payment of interest, which were premised solely on the assumption that GST was leviable on the transaction would not survive.

8. In our opinion, the respondents have erroneously proceeded on the footing that the ITC was "blocked" under section 17(5)(d) of the CGST Act. Section 17(5)(d) of the CGST Act, presupposes the existence of a taxable inward supply, on which, tax is lawfully leviable and paid. In the facts of the present case, in light of the judgment of this Court, the transaction itself neither qualify as "supply" under section 7 of the CGST Act nor it is chargeable to tax under section 9 of the CGST Act. When there is no taxable supply, the question of applying blocking provision under section 17(5) of the CGST Act does not arise at all.

8.1 The respondents have alleged that the petitioner has contravened the provision of section 17(5)(d) of the CGST Act read with Gujarat Goods and Services Tax Act and has availed ineligible ITC. In an identical issue raised in ***Special Civil Application No.18068 of 2025,*** *section 17(5)(d) of the CGST Act was interpreted and it was held that the legislative intent is clear that the bar on credit applied exclusively to construction related expenditure and the apportionment of credit and blocked credits relating to such business.*

8.2. At this stage, it is apposite to refer to the decision rendered in ***Special Civil Application No.18068 of 2025,*** *dated 10.02.2026. Relevant paragraphs of the said decision read thus:*

"9. At this stage, we may refer to the provision of Section 17(5)(d) of the GST Act, which is as under:

> ***"Apportionment of credit and blocked credits.***
> *17. (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.*
> *.....*
> *(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-*
> *....*
> *(d) goods or services or both received by a taxable person* ***for***

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Oct 24 11:05:06 IST 2026

> ***construction of an immovable property*** *(other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.*
>
> *[Explanation 1.]- For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;*
>
> *Explanation 2.- For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery".*

10. Thus, a plain and simple reading of provision of Section 17(5)(d) of the GST Act exposits that the apportionment of credit and blocked credit relates to the goods or services or both by a taxable person for the purpose of construction of any immovable property. Thus, the legislative intent is clear that the bar on credit applied exclusively to construction related expenditure and the apportionment of credit and blocked credits relating to such business. The respondent has not established that the petitioner has undertaken any construction activity whatsoever and apart from transferring the leasehold rights in GIDC Plot, is also accordingly, undertaking the construction activities. Thus, the provision of Section 17(5)(d) of the GST Act would not even remotely apply to the petitioner. Hence, the allegation of availing block credit by resorting to the provision of Section 17(5)(d) of the GST Act, is uncalled for and there is a complete non-application of mind on behalf of the respondent. With regard to the provision of Section 74 of the GST Act, under which the notice has been issued, we may reproduce the same, which reads as under:

> *“Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful-misstatement or suppression of facts-*
>
> *(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*
>
> *Explanation "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any*

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Oct 24 11:05:06 IST 2026

information on being asked for, in writing, by the proper officer."

> *11. Thus, we do not find that in the instant case, there is any fraud or wilful mis-statement or any suppression of facts at the end of the petitioner in availing the ITC or the same is wrongly availed. On the contrary, it has not been denied by the respondent that, the petitioner had, though utilised the ITC of Rs. 38,60,608/- in the month of July, 2022 but accordingly he has reversed to Form DRC-03 dated 11.04.2023. Thus, the petitioner has paid the entire output of GST liability in cash. Hence, the question of resorting to Section 74 of the GST Act is also uncalled for. On both these counts, the action of the respondent is without jurisdiction and in fact the respondent authority has misinterpreted and misapplied the statutory provisions which calls for interference of this Court and hence the petitioner cannot be relegated to further remedy of facing proceeding, which does not satisfy the statutory pre-requisite. Hence, the Writ petition succeeds. The impugned notice dated 28.10.2025 issued by the respondent under Section 74(1) of the GST Act is quashed and set-aside. The respondent is directed to unblock the ITC amounting to Rs.98,11,678/-, which has been lying in the electronic credit ledger of the petitioner. Necessary action shall be taken within a period of three weeks from the date of receipt of the order. Rule is made absolute with no order as to costs."*

> *8.3. The facts of the present case are identical to the facts of the aforesaid writ petition being Special Civil Application No.18068 of 2025 wherein, it is not in dispute that the petitioner herein has not undertaken any construction activity and in view thereof, section 17(5)(d) of the CGST Act is erroneously invoked qua the petitioner herein. Accordingly, the allegation of availing blocked credit by the revenue is misconceived and in view thereof, the determination demand on the basis of section 17(5)(d) of the CGST Act is held to be unsustainable in the eyes of law."*

9. Considering the settled legal position, as referred to herein above, the question of fraud or suppression or wilful misstatement does not arise in the facts of the present case to invoke section 74(1) of the CGST Act on the allegation that the ITC constituted blocked credit under section 17(5)(d) of the CGST Act, more particularly, the petitioner having collected the GST amounting to Rs.23,02,08,146/- from M/s. Deepak Chem Tech Ltd. and duly deposited the said amount of GST at the time of filing of Form GSTR 3B for the month of December, 2021.

10. For the reasons as referred to herein above, the action of

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Oct 24 11:05:06 IST 2026

the revenue is contrary to the statutory provisions and settled legal position, which requires interference. Hence, both the writ petitions ***succeed.*** The impugned show cause notices bearing No.VAD-I/Prev/SCN/202/Gr.E/Deepak/2023-24 dated 22.03.2024 and No.VAC-I/Prev/SCN/97/Deepak/24-25/Gr.D, dated 07.06.2024 issued by the respondent No.3, are quashed and set aside. Rule is made absolute. No order as to costs.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI,J)

NEHA /1-2

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Oct 24 11:05:06 IST 2026