

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 5796 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA  
and  
HONOURABLE MR.JUSTICE D.N.RAY**

Approved for Reporting		
Yes	No	

H N COTEX PVT. LTD.  
Versus  
STATE OF GUJARAT & ANR.

Appearance:

MR PRIYANK P LODHA(7852) for the Petitioner(s) No. 1  
MS SHRUNJAL SHAH, AGP for the Respondent(s) No. 1  
NOTICE NOT RECD BACK for the Respondent(s) No. 2

**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA  
and  
HONOURABLE MR.JUSTICE D.N.RAY**

**Date : 28/03/2025  
ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr. Priyank Lodha for the petitioner and learned Assistant Government Pleader Ms. Shrunjal Shah for the respondent-State.



2. Rule returnable forthwith. Learned Assistant Government Pleader Ms. Shrunjal Shah waives service of notice of rule for and on behalf of the respondent.
3. Having regard to the controversy involved which is in narrow compass, with the consent of the learned advocates for the parties, the matter is taken up for hearing.
4. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for direction to set aside order No. ZD2402240356999 dated 17.02.2024 whereby the respondent No.2-State Tax Officer, Ghatak 33(Kadi) adjudicated the show-cause notice dated 13.12.2023 without following the principles of natural justice.



5. The facts leading to the present petition are as follows:-

5.1. The petitioner is engaged in manufacturing of textile. During the course of the business, the petitioner procured inputs from various suppliers and whenever eligible, availed the Input Tax Credit of the supplies received in the requisite form as prescribed under the provisions of the Central/State Goods and Service Tax Act, 2017 [for short 'the GST Act'].

5.2. The petitioner received the summons dated 28.06.2023 from the Respondent No.2-State Tax Officer, Ghatak 33 (Kadi) to submit the Books of Account pertaining to the alleged bogus suppliers



viz. (i) Harshiddhi Enterprise (2) Rishabh Enterprise (3) Shiv Trading Company.

5.3 The petitioner, by reply dated 20.07.2023, submitted documents pertaining to the above suppliers including Form GSTR-2A invoices with E-way bills, ledger accounts and audit reports for the Financial Year 2020-21 and 2021-22.

5.4 The respondent No.2 thereafter issued the intimation u/s. 74(5) of the Act in FORM GST DRC-01A dated 15.09.2023 calling upon the petitioner to reverse the Input Tax Credit of Rs. 52,68,624/- alleged to have been wrongly availed by the petitioner.

5.5 Thereafter, a show-cause notice dated 13.12.2023 was issued in FORM GST DRC-01 by respondent No.2.



5.6 However, the respondent No.2 passed the impugned Order-in-Original dated 17.02.2024 in FORM GST DRC-07 holding that the suppliers of the petitioner were bogus entities and purchases made by the suppliers of the petitioner were either bogus or done through suppliers whose registrations were cancelled and therefore, under section 16(2) of the GST Act, tax is not paid to the Government and therefore, ITC in respect of the inward supplies from such suppliers were invalid and accordingly, the petitioner was called upon to make payment of Rs. 54,95,813/-.

Being aggrieved, the petitioner has preferred this petition.



6. Learned advocate Mr. Priyank Lodha for the petitioner submitted that there is a clear violation of principles of natural justice as the respondent authorities have, without providing mandatory opportunity of personal hearing as provided under the section 75(4) of the GST Act, has passed impugned order-in-original dated 17.02.2024 under FORM DRC-07 dated 17.02.2024. It was therefore submitted that only on this count, the impugned order-in-original may be quashed and set aside and the matter may be remanded to the respondent No.2 to grant an opportunity of hearing to the petitioner in accordance with the provisions of section 75(4) of the GST Act before passing the impugned Order-in-Original and after considering the submissions which



may be made by the petitioner in accordance with law.

7. On the other hand, learned AGP Ms. Shah could not controvert the fact that the respondent No.2 has, without providing opportunity of personal hearing, passed the impugned order.

8. This Court (Coram: Mr. N.V.Anjaria & Mr. Bhargav D. Karia, JJ.) issued notice for final disposal on 23.04.2024.

9. It is not disputed that the personal hearing had not been granted in the instant case. It is an ex-parte order in bearing No. ZD2402240356999 passed on 17.02.2024 in FORM DRC-07 by making the addition of huge amount of tax, interest as penalty of Rs. 52,68,624/-.



10. The decision of this Court in case of **Graziano Trasmissioni India Pvt. Ltd. vs. State of Gujarat** [2022(66) G.S.T.L. 38 (Guj.)] and **Alkem Laboratories Ltd. vs. Union of India** [2021(46) G.S.T.L. 113 (Guj.)] and other decisions will need to come to the rescue of the petitioner which insist on providing the opportunity of personal hearing when any adverse decision is contemplated, even without any request for personal hearing on the part of the party concerned.

10.1. In case of **Graziano Trasmissioni India Pvt. Ltd. (supra)**, the Court held and observed thus:-

“11. At the outset, we would like to reproduce Section 75 of the CGST Act, 2017, which is as under:



“Section 75 : General provisions relating to determination of tax.

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or subsections (2) and (10) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.



(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer,



the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the



High Court and that of the Supreme Court shall be excluded in computing the period referred to in subsection (10) of section 73 or subsection (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act."

12. Section 75(4) of the CGST Act, 2017 provides that an opportunity of hearing is to be provided where a request is received in writing from the person chargeable with tax or



penalty or where any adverse decision is contemplated against such person.

13. The stand on the part of the Department is that the Online Portal mode was chosen by the petitioners, which had resulted in the entire matter having been proceeded Online. The opportunity of hearing was not granted since the same was not requested for. However, while so arguing, the provision of Section 75(4) has been missed out. Even without any request having been made on the part of the party concerned, when any adverse decision is contemplated, personal hearing is a must. Hence, the same is missing in the instant case and the request on the part of the petitioners is to remand the matter by directing the respondents to consider the matter afresh by giving the fullest opportunity to the parties to present their case.



14. Without entering into the merits of the matter, only on the ground of non-availment of opportunity of personal hearing, we deem it appropriate to quash the impugned Orderin-original No. ZD240322019756J dated 25.03.2022 and two (2) Summary Orders in Form DRC-07 passed by respondent No.3. The respondent No.3 shall avail the opportunity of personal hearing on 18.07.2022. If any document/s are needed to be furnished, let the same be done on or before 13.07.2022 physically. No adjournment shall be sought for by the petitioners. None of the observations will come in the way of the parties in finally deciding the matter. Both the petitions stands disposed of accordingly. Direct service permitted."

11. In view of the above submissions of the learned advocates for the respective



parties and without going into merits of the matter, impugned order-in-original dated 17.02.2024 issued by respondent No.2 is hereby quashed and set aside with all consequential proceedings. The respondent authorities shall pass fresh de novo order after providing an opportunity of hearing to the petitioner and after considering the submissions which may be made by the petitioner in accordance with law. Such exercise shall be completed within a period of 12 weeks from the date of receipt of copy of this order. The petition is disposed of accordingly. Rule is made absolute to the aforesaid extent.

**(BHARGAV D. KARIA, J)**

**(D.N.RAY,J)**

JYOTI V. JANI