



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5657 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:
PRIYANK P LODHA(7852) for the Petitioner(s) No. 1
MS SHRUNJAL SHAH, AGP for the Respondent(s) No. 1,2

**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 respondents.



2. Rule returnable forthwith. Learned Assistant Government Pleader Ms. Shah waives service of notice of rule on behalf of the respondents.

3. Having regard to the controversy involved which is in narrow compass, with the consent of the learned advocates for the respective 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 quashing and setting aside order dated 17.02.2024 whereby, a show cause notice dated 13.12.2023 is adjudicated by the respondent No.2-Sales Tax Officer (I)-Unit 33 Kadi.



5. Brief facts of the case are as under:

5.1 The petitioner is engaged in manufacturing of Textiles and during the course of business, the petitioner procured inputs from various suppliers and availed the Input Tax Credits whenever eligible from 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 respondent No.2-the 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 in u/s. 74(5) of the Act FORM GST DRC-1A dated 15.09.2023 calling upon the petitioner to reverse the input Tax Credit of Rs. 11,98,846/- 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. The petitioner filed reply dated 16.01.2024 in FORM GST DRC-06 requesting for 15 days' time to collect relevant documents referred to in the show-cause notice and also prayed for personal hearing.

5.6 However, without considering the request made by the petitioner, 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. 28,29,276/-.

Being aggrieved, the petitioner has preferred this petition.

6. Learned advocate Mr. Priyank Lodha for the petitioner submitted that the respondent authorities have ignored the provision of section 75(4) of the GST Act though the petitioner has prayed for personal hearing vide its reply to the show-cause notice dated 16.01.2024 while praying for 15 days' time for collection of documents regarding the show-cause notice. Learned advocate Mr. Lodha invited attention of the Court to FORM GST DRC-06 at Annexure A



page 71 of the paper-book to submit that there is a clear violation of principles of natural justice for not granting opportunity of hearing to the petitioner though prayed for by the petitioner before the respondent authority and the respondent No.2 passed the impugned order-in-original after one month from the date of such request made by the petitioner without granting any opportunity of hearing. It was therefore submitted that only on this count, the impugned order 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 though the petitioner prayed for personal hearing on 16.01.2024, respondent No.2, without considering such request, has passed impugned Order-in-Original dated 17.02.2024.

8. 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 is hereby quashed and set aside only on the ground that the respondent No.2 failed to grant any opportunity of hearing to the petitioner



while passing impugned order inspite of the fact that the petitioner prayed for personal hearing on 16.01.2024 in FORM GST DRC-06. 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. Rule is made absolute to the aforesaid extent.

(BHARGAV D. KARIA, J)

(D.N.RAY, J)

JYOTI V. JANI