

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 5830 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

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Appearance:

MR ABHAY Y DESAI(12861) for the Petitioner(s) No. 1,2

MAUNIL G YAJNIK(9346) for the Respondent(s) No. 1

MR UTKARSH SHARMA ASSISTANT GOVERNMENT PLEADER and MS

NIMISHA PARIKH ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 2,3,4

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 10/07/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr. Abhay Desai for the petitioners, learned advocate Maunil G. Yajnik appearing for respondent no. 1 and learned Assistant Government Pleader Mr. Utkarsh Sharma with learned Assistant Government Pleader Ms. Nimisha Parekh for respondent nos. 2 to 4.

2. Rule returnable forthwith. Learned advocates for the respondents waive service of notice of rule on behalf of the respective parties.

3. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the show-cause notice dated 27.12.2023 and Order-in-Original dated 10.03.2024 issued under Section 73 of the Central/State Goods and Services Tax Act, 2017 (For Short "the GST Act") for Financial Year 2018-19. The petitioner has also challenged the order dated 12.03.2025 rejecting the rectification application filed by the petitioner as well as the order dated 23.10.2024 passed by the Appellate Authority rejecting the appeal on the ground of limitation.

4. Brief facts of the case are as under :

4.1.The petitioner is a Private Limited Company

engaged in business of manufacturing and supplying building chemical products and technologies. The petitioner filed the requisite returns and forms under the provisions of the GST Act for the period from 01.04.2018 to 31.03.2019. It is the case of the petitioner that respondent no. 3 Assistant Commissioner of State Tax - Ghatak-46 (Godhara), Division-5 (VAD), based on system-based scrutiny, issued an intimation in Form DRC-01A dated 26.12.2023 under Section 73(5) of the GST Act for the Financial Year 2018-19 read with Rule 142(1A) of the Central/State Goods and Services Tax Rules, 2017 (For Short "the GST Rules") intimating the proposed liability of Rs.78,74,893/- on three grounds:

(i) There was a mismatch between the turnover as per the E-way bill with Form GSTR-09.

(ii) The Excess Input Tax Credit (ITC) claimed on account of non-reconciliation of the information.

(iii) Under declaration of ineligible Input Tax Credit (ITC) under Section 17(5) of the GST Act.

4.2.It is the case of the petitioner that the respondent without allowing the petitioner to furnish response against the notice in Form DRC01A issued a show cause in Form DRC-01 on 27.12.2023 on the next day under Section 73(1) of the GST Act.

4.3.It appears from the record that the respondent no. 3 issued notice for attachment in Form DRC-01A showing the grounds for issuing show-cause notice which is prepared for issuing the notice under Form DRC-01 and there is no attachment to notice of Form DRC-01A. The petitioner by reply dated 04.01.2024 to notice in Form DRC-01 issued under Section 73(1) of the GST Act indicated that the petitioner has duly paid the tax liability on the actual sales made by it during the period under consideration and the difference between the values declared in the Eway

bill and the values declared in Form GSTR-9 was due to errors in generating E-way bills and there was no short payment of tax, the petitioner therefore, requested to drop the proceedings.

4.4. With regard to the other two grounds for issuance of the show-cause notice, it was indicated that the petitioner has availed the Input Tax Credit in accordance with law and, therefore, the show-cause notice proposing to recover Input Tax Credit based on HSN indicated by the suppliers was also required to be dropped.

4.5. It appears that the respondent no. 3 without considering the submissions of the petitioner and without granting personal hearing and in accordance with the provisions of Sections 75(4) of the GST Act passed the impugned order dated 10.03.2024 raising difference of tax of Rs.27,68,190/- along with interest and penalty under Section 73(9) of the GST Act on the ground

of mismatch between the E-way bill turnover and turnover as per Form GSTR-09.

4. 6.The petitioner thereafter filed a rectification application before respondent no. 3 pointing out the error apparent on the face of the record by not granting the personal hearing and by ignoring the submission made by the petitioner which was rejected by the respondent no. 3 by order dated 12.03.2025. The petitioner also preferred an appeal challenging the order dated 10.03.2024 under Section 107 of the GST Act. However, the appeal was rejected by the impugned order dated 23.10.2024 on the ground of limitation.

5. Learned advocate Mr. Abhay Desai for the petitioners submitted that the respondent no. 3 could not have assumed jurisdiction for issuance of show-cause notice under Section 73 of the GST Act on the ground of difference between the turnover of the petitioner as per E-way bill and

turnover disclosed in Form GSTR-09. It was submitted that Section 68 of the GST Act provides for inspection of the goods in movement and Rule 138 of the GST Rules lay down the procedure for search and inspection of goods in movement by the respondent authority. It was submitted that as per provisions of Rule 138 of the GST Rules, Eway bill is required to be generated by the petitioner either in relation to supply, if the consignment value of the goods is exceeding Rs.50,000/- (Rupees Fifty Thousand Only) or for reasons other than supply or due to inward supply from an unregistered person along with other eventualities enumerated in the said Rule.

5.1. It was submitted that essentially E-way Bill is to be generated for transport of the goods from Location-'A' to Location-'B'. Learned advocate Mr. Desai thereafter submitted that as per the provisions of Section 7 read with Section 9(1) of the GST Act, it creates liability of payment of

tax on the supply of the goods. It was submitted that as per Section 7 of the GST Act the "scope of supply" is defined which provides that all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration is to be considered as 'supply' upon which as per Section 9 of the GST Act, the GST is levied. It was, therefore, pointed out that as per Chapter-XV of the GST Act, the proceedings for demand and recovery are prescribed in Section 73 of the GST Act which provides for the jurisdiction to the respondent Assessing Officer to initiate the proceedings for determination of the tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of fact.

5.2.It was submitted that Section 74 of the GST Act provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of any fraud or any willful misstatement or suppression of facts. It was, therefore, submitted that the respondent authority could not have assumed the jurisdiction under Section 73 of the GST in absence of any fraud or any willful misstatement or suppression of fact on the part of the petitioner for the issuance of impugned show cause notice. It was pointed out that only because of the difference in turnover as per the E-way bill and the turnover as per the GSTR-09, it cannot be said that there is fraud, misrepresentation or suppression on the part of the petitioner and, therefore, the impugned show cause notice is without jurisdiction and consequently the Order-in-Original, the appellate order and order in rectification application are also required to be quashed and set aside.

5.3.It was further submitted that even on perusal of the Order-in-Original, respondent no. 3 has not given any reason for rejecting the submissions made by the petitioners and only cursory reasons are assigned by respondent no. 3.

It was, therefore, submitted that the Order-in-Original is an unseasoned order and therefore, liable to be quashed and set aside.

5.4.In support of his submission reliance was placed on the decision of the Hon'ble Apex Court in case of ***Siemens Engineering and Manufacturing Co. of India Ltd. v. Union of India and Anr.***, reported ***(1976) 2 SCC 981*** wherein the Hon'ble Apex Court has emphasized for assigning reasons by the quasi judicial authority as under :-

'6.Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned

counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N. M. Desai v.

The Testeels Ltd. & Anr. But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants has been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also

failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the Customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the Income-tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."

5. It was, therefore, submitted that the impugned show cause notice and the consequent orders are liable to be quashed and set aside.
6. On the other hand learned Assistant

Government Pleader Mr. Utkarsh Sharma appearing with learned Assistant Government Pleader Ms. Nimisha Parekh for the respondents submitted that the respondent authorities have rightly assumed the jurisdiction for issuance of the impugned show cause notice for the year under consideration as there was mismatch in the E-way data of the IGST and the turnover data mentioned in GSTR-09 and therefore, it was reflected that E-way turnover of the outward supplies was greater than the turnover shown in GSTR-09 and hence the difference of IGST in outward supply and GSTR-09 E-way bill was raised by the department in the impugned show cause notice issued under Section 73 of GST Act.

6. 1. It was submitted that the petitioner has failed to submit the details in reply to the show cause notice in Form GSTR-09 on 04.01.2024 and after passing the Order-in-Original, petitioner has filed the rectification application and

reconciliation turnover as per the E-way bill to point out that the E-way bills for the goods which were not transported were inadvertently not cancelled. It was further pointed out that the petitioner has never opted for personal hearing and, therefore, there was no violation of the provisions of Section 75(4) of the GST Act.

7. Having heard the learned advocates for the respective parties and considering the facts of the case, it would be germane to refer the various provisions of the GST Act to answer the controversy raised in this petition which is in a narrow compass. The only issue which has arisen in this petition is as to whether the respondent authority would have assume the jurisdiction under Section 73 of the GST Act to initiate the proceedings for determination of the tax which is either short paid, not paid as described therein only on the basis of the difference in turnover of the E-way

bill and the turnover as per form GSTR-9 filed by the petitioner or not. It would therefore, be germane to refer to various provisions of the GST Act and GST Rules :-

"Section 7. Scope of supply.-

(1) For the purposes of this Act, the expression - "supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

²[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or furtherance of business;
³[and]

(c) the activities specified in Schedule I , made or agreed to be made without a consideration; ⁴[****]

Section 9. Levy and collection.-

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods

and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Section 68. Inspection of goods in movement. -

(1) The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

(2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed .

(3) Where any conveyance referred to in subsection (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

CHAPTER XV DEMANDS AND RECOVERY

*** Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than 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 for any reason, other than the 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 leviable under the provisions of this Act or the rules made thereunder.

*** 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.

[Rule 138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill. - **

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees-

- (i) in relation to a supply; or
- (ii) for reasons other than supply; or
- (iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods as specified in Part A of FORM GST EWB-01 , electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

PROVIDED that the transporter, on an authorization received from the registered person, may furnish information in Part A of FORM GST EWB01 , electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

PROVIDED FURTHER that where the goods to be transported are supplied through an ecommerce operator or a courier agency, on an authorization received from the consignor, the information in Part A of FORM GST EWB-01 may be furnished by such ecommerce operator or courier agency and a unique number will be generated on the said portal:

PROVIDED ALSO that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

PROVIDED ALSO that where handicraft goods are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24 , the e-way bill shall be generated by the said person irrespective of the value of the consignment.

² [Explanation 1 . - For the purposes of this rule, the expression "handicraft goods" has the meaning as assigned to it in the Government of India, Ministry of Finance, Notification No 56/2018-Central Tax , dated the 23rd October, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1056 (E), dated the 23rd October, 2018 as amended from time to time.]

Explanation 2 . - For the purposes of this rule, the consignment value of goods shall be the value,

determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods."

8. On perusal of the above provisions, the scheme of GST Act is clear to the effect that when there is any fraud, willful misstatement or suppression by the assesses then proceedings for determination of tax either not paid, short paid etc., are required to be initiated under Section 73 of the GST Act. In the facts of the case, the E-way bill is required to be issued by the assessee in case of movement of the goods as provided under Section 68 of the GST Act read with Rule 138 of the GST Rules and, therefore, for determination of the tax which is either not paid or short paid, in absence of any willful misstatement, fraud or suppression by the petitioner, the respondent authority could not assume jurisdiction to

initiate proceedings under Section 73 of the GST Act. In the facts of the present case, admittedly the impugned show cause notice dated 26.12.2023 is issued under Section 73 of the GST Act and there is no allegation of fraud, willful misstatement or suppression by the petitioner in the entire proceedings.

9. For the issuance of show cause notice under Section 74 of the GST Act, the respondent authority has to atleast come to a *prima facie* conclusion that there is fraud, willful misstatement or suppression by the assessee and for that the respondent authority is required to carry out preliminary investigation to find out such fraud, willful misstatement or suppression on the part of the assessee to initiate the proceeding under Section 74 of the GST Act which would entail rigors of higher amount of interest, penalty and also give an extended period for assumption of jurisdiction by the respondent

authority. Therefore, we are of the opinion that the respondent authority could not have assumed the jurisdiction under Section 73 of the GST Act in absence of any fraud, willful misstatement or suppression for issuance of notice on the ground of difference between the turnover as per E-way bill and turnover declared by the assessee in Form GSTR-09.

10. In view of the above, the other contentions of the petitioner regarding not granting opportunity of hearing or not assigning reasons by the respondent authority are not dealt with.

11. In view of the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned show-cause notice dated 27.12.2023 and consequential Order-in-Original dated 10.03.2024 and orders dated 12.03.2025 and 23.10.2024 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to cost.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

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