**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 6598 of 2025**

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M/S SHREE DEVIDAYAL METALS
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR MOHAMMADIRFAN M SHAIKH(11921) for the Petitioner(s) No. 1
MR VARIS V ISANI(3858) for the Petitioner(s) No. 1
MS SHRUNJAL SHAH, AGP for the Respondent(s) No. 1,2,3,4,5,6

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE P. M. RAVAL

Date : 08/05/2025

ORAL ORDER

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

1. Heard learned Advocate Mr. Varis Isani for the petitioner and learned AGP Ms. Shrunjal Shah for the respondent.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 22.03.2025 in Form GST MOV-6, notice of confiscation in Form GST MOV-10 dated 22.03.2025 and order of confiscation in Form GST



MOV-11 dated 06.04.2025.

3. It is the case of the petitioner that petitioner is a proprietary concern holding GST Number and is filing GST returns regularly.

4. The petitioner purchases scrap from various suppliers. It was submitted that during the course of one such supply, the goods and conveyance were intercepted by the State Tax Officer of Amirgadh, Mumbai Squad-respondent No.5 who issued Form GST MOV 01 and 02 dated 22.03.2025 for inspection of the goods and conveyance.

5. It is the case of the petitioner that in the notice issued in Form GST MOV 1 by respondent No. 5 has also annexed annexures wherein details of suppliers, recipients, LR Number, Invoice Number, date, description of goods, value and e-way bill number etc is mentioned. It was submitted that there was



no discrepancy in the goods mentioned in the e-way bills and invoices and physical verification was carried out by the respondent no.5 and issued Form GST MOV 04 dated 22.03.2025.

6. It was submitted that thereafter the respondent no.5 issued the order in Form GST MOV 6 for detention of the goods for further investigation by stating that the supplier of the petitioner, M/s Dhatu Metallo Industries Private Limited was not found during the spot visit of the said place of business as per the spot visit report. It was also pointed in detention order that M/s Mewad Scrap who was supplier of goods to M/s Dhatu Metallo Industries Private Limited was also not found as per the physical verification report. It was also found that there was no movement of supply of the goods between M/s Dhatu Metallo Industries Private Limited and suppliers M/s Mewad Scrap with an intention to evade the payment of tax.



7. Thereafter the notice under Section 130 of the CGST Act in Form GST MOV 10 was issued, and after considering the reply filed by the petitioner the impugned order in Form GST MOV 11 dated 06.04.2025 was passed by the respondent no.5 observing as under.

“4. The person in charge has not filed any objections/ the objections filed were found to be not acceptable for the reasons stated below:

a) From the records available on GST portal, that so called dispatcher M/s Dhatu Metallo Industries. GSTIN: 24AAICD3023HIZ2 has purchased goods from an another dealer M/s MEWAD SCRAP, GSTIN: 24BGMPJ7290NIZQ (Legal Name: MAYANK NAVJYOT JAIN) in past whose registration has been cancelled suo moto after served Show Cause Notice in FORM REG- 17 on date 17.03.2025 with the reason mentioned as “ Rule 21(b)- person issues invoice or bill without supply of goods or services or both in violation of the provisions of the Act. Or the rules made thereunder”. Another eye stacking notes found from that annexure attached with REG-17 is that at the time of spot verification on address of M/s Mewad Scrap, the proper officer has clearly noticed that another business named M/s Dhatu Metallo Industries were operated from registered principal address of the M/s Mewad Scrap and this M/s Dhatu Metallo Industries is actually the dispatcher of the intercepted goods as per produced documents in particular transaction which means such supply of goods means to move with



suspicious intentions to evade payment of tax. The Copy of the Show Cause Notice and attached describe details annexures are attached with GST FORM MOV 06. Prima facie, it is enough reason to believe that M/s Dhatu Metallo Industries dispatched such goods from unknown dealer in behalf of their own bills.

b) Respective jurisdictional authority has physically verified the premises of M/s Dhatu Metallo Industries. GSTIN: 24AAICD3023HIZ2 which is located at Chadulal Chawl. Part A. Tena No. 02562901150001U, Rakhiyal Road, Ahmedabad, Gujarat. But in verification report, it is clearly found that there is no such business operated from above mentioned address. After duly verification, it is found that the Chandulal's Chawl is a slum area and there is no availability of such business places over there. At the nutshell, the spot visit of said place is negative.

c) Another serious contention is also over here on intercepted vehicle PB23T5645. In said transactions the following e-way bills were generated from the various dealers from the Kanpur. Uttarpradesh and Gobinadgarh, Punjab time to time even after the conveyance was intercepted by the undersigned authority. Such bogus e-way bills generation details are clearly elaborated from the GST portal and e-way bill officer login application which are mentioned on chronicles as follows.

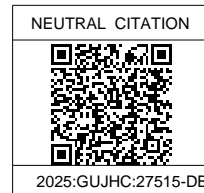
d) As per the statement of driver, the intercepted vehicle (PB23T5645) is stationing in Ahmedabad from 20.03.2025 in somewhere in Ahmedabad. When the said vehicle was in Ahmedabad, then how can the below mentioned first four e-way bills mentioned in below table be



generated on number of intercepted vehicle from the place where the intercepted vehicles was about to move. It is clearly shows the malafide intention of circular trading of Fake Input Tax Credit by only issuance of invoices and e-way bills without movement of goods. Such intentions are also needs to be verified. Even after intercepting the said conveyance on date 22.03.2025, 05:45 AM and parked at Amirgadh Check Post, last nine e-way bills listed in below table were generated with suspicious intention.

8. Learned Advocate Mr. Varis Isani for the petitioner submitted that the respondent authority has passed the impugned orders without giving any opportunity of hearing and without considering the reply filed by the petitioner.

9. However, in view of the findings arrived at by the respondent authority it appears that the existence of relation between the two entities i.e. M/s. Dhatu Metallo Industries Private Limited and M/s. Mewad Scrap and contentions raised by the petitioner, is giving rise to the disputed of questions of fact and therefore we are not inclined to entertain this petition while exercising our extraordinary jurisdiction under Article



227 of the Constitution of India in view of the decision of the Hon'ble Apex Court in case of **The Assistant Commissioner of State Tax and Others V/s. M/s. Commercial Steel Limited** reported in 2021(9) TMI 480 – Supreme Court, wherein it is held as under.

*“**Para-11.** The respondent had statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:*

- (i) a breach of fundamental rights;*
- (ii) a violation of the principles of natural justice;*
- (iii) an excess of jurisdiction; or*
- (iv) a challenge to the vires of the statute or delegated legislation.”*

*“**Para-12.** In the present case, none of the above exceptions was established. There was, in fact, no fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of the facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.”*

*“**Para-13.** For the above reasons, we allow the appeal and set aside the impugned order of the High Court. The writ petition filed by the respondent shall stand dismissed. However, this shall not preclude the respondent from taking recourse to appropriate*



remedies which are available in terms of Section 107 of the CGST Act to pursue the grievance in regard to the action which has been adopted by the state in the present case.”

10. Therefore, without entering into the merits of the matter the petition is disposed of, so as to enable the petitioner to avail alternative efficacious remedy by preferring an appeal under Section 107 of the GST Act to challenge the impugned order passed in Form GST MOV

11. The petition is accordingly disposed.

(BHARGAV D. KARIA, J)

(P. M. RAVAL, J)

CHIRAG PAL / RAGHUNATH R NAIR