

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 20134 of 2023**

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M/S R V ENTERPRISES & ANR.**Versus****STATE OF GUJARAT & ORS.**

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Appearance:**MR D K TRIVEDI(5283) for the Petitioner(s) No. 1,2****MS SHRUNJAL SHAH, AGP for the Respondent(s) No. 1,2,3**

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 19/06/2025****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. By this petition under Article 227 of the Constitution of India, the petitioners have prayed for the following reliefs:

"10(C). Your Lordships may be pleased to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order quashing and setting Show-cause Notice dtd. 28/09/2023 bearing Reference No. ZD240923046218C along with



attachment to Show-cause Notice (Annexure 'B' Colly to this petition) being issued by Respondent No. 02 herein;

C.1 Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus, or any other appropriate writ or order quashing and setting aside order in Form GST-DRC-07 along with 'Summary of Order' bearing Reference No.STO-3/Morbi/DRC-07/R.V.ENT.17-18/2023-2024/No.7665 dated 31/12/2023 (Annexure-D Colly.);

C.2 Your Lordships may be pleased to stay the implementation, execution and operation of the order in Form GST-DRC-07 along with 'Summary of Order' bearing Reference No.STO-3/Morbi/DRC-07/R.V.ENT.17-18/2023-2024/No. 7665 dated 31/12/2023 (Annexure- D Colly.), pending notice, admission and final hearing of this petition.

C.3 Your Lordships may be pleased to grant ex- parte ad-interim order in terms of prayer clause C.2 hereinabove;

C.4 Your Lordships may be pleased to issue writ of mandamus or writ in a nature of mandamus or any other appropriate writ 'reading



down' Section 16(2)(c) of CGST Act, 2017/ SGST Act, 2017 in such a way that it should mean that the unscrupulous registered person who has colluded with the registered supplier who has not actually paid the tax charged in respect of the supplies received by the said registered person either in cash or through utilization of Input Tax Credit admissible in respect of the said supplies, may not be entitled to the credit of any Input Tax in respect of any supplies of goods or services or both to him and that said restriction may not be applicable to a bona-fide recipient of supplies who has received the supplies in normal course of business on payment of the basic value along with tax charged on the same by the supplier;"

2. Brief facts of the case are that the petitioner is a partnership firm. The petitioner firm is registered under the provisions of the Central/State Goods and Service Tax Act, 2017 (For short "the GST Act"). During the financial year 2017-



2018, the petitioner availed Input Tax Credit on the purchases made from the various suppliers in regard to plastic items supplied by the petitioner. According to the petitioner, the suppliers of the goods were registered with GST department at the relevant point of time and had issued valid invoices, E-way bill and supplied the goods to the petitioner.

2.1 The petitioner also filed return in Form GSTR-1 on the GSTN portal by uploading the requisite details to be mentioned therein and details of credit available on the basis of invoices of the suppliers were auto-populated on the GSTN Portal in Form GSTR-2A. The petitioner accordingly, availed the input tax credit.



2.2 The petitioner also filed annual return in Form GSTR-9 for the Financial Year 2017-2018 declaring that ITC of SGST and CGST of Rs.3,49,324/- equally were availed on the basis of invoices issue by the dealer for goods supplied to the petitioner.

2.3 It is the case of the petitioner that without issuance of any intimation in Form GST DRC-01A, the respondent issued a show cause notice in Form GST DRC-01 on 28.09.2023 under section 73 of the GST Act calling upon the petitioner to show cause as to why the input tax credit of Rs.6,98,648/- availed by the petitioner during the financial year 2017-2018 should not be disallowed on the ground that the



petitioner has availed the input tax credit on supply of the goods when the supplier's registration was cancelled on account of non payment of outward tax liability by the supplier of the goods to the petitioner.

2.4 Being aggrieved by the show cause notice, the petitioner has preferred this petition.

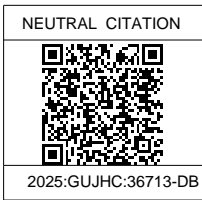
3. This Court by order dated 1.12.2023 issued notice to the respondent. Thereafter the respondent passed the order-in-original in Form GST DRC-07 on 31.12.2023 raising demand of Rs.15,48,204/- along with interest of Rs.3,89,846/- each under the SGST and CGST Act and penalty of Rs.34,932/- each under



the provisions of both the Act.

4. The petitioner therefore, preferred a draft amendment which was allowed by order dated 2.05.2025.

5. Learned advocate Mr. Trivedi for the petitioner submitted that the impugned show cause notice as well as order-in-original are without jurisdiction in absence of issuance of notice in Form GST DRC-01A as the petitioner was prevented from filing reply to such intimation which ought to have been issued by the respondent authority to point out that the petitioner was a bona fide purchaser of the goods and has rightly availed the Input Tax Credit for the period under consideration.



5.1 In support of his submission, reliance was placed on decision of this Court in case of **Agrometal Vendibles Pvt. Ltd. v. State of Gujarat** reported in (2022) 63 G.S.T.L. 212 (Guj.)

5.2 It was further submitted that the petitioner has approached this Court by challenging the show cause notice issued under section 73 of the GST Act and during the pendency of this petition, the respondent authorities have passed the impugned order-in-original considering the documents available on record without giving any opportunity to the petitioner to reply . It was therefore, submitted that the petitioner has not been provided any opportunity of hearing by the



respondent as contemplated under section 75(4) of the GST Act before passing adverse order against the petitioner.

5.3 It was further submitted that provisions of section 16(2)(c) of the GST Act would not be applicable in the facts of the case of the petitioner as the impugned show cause notice as well as order-in-original are passed without considering the fact that the petitioner is a bona fide purchaser of the goods and has already paid the tax on the supply of the goods to the supplier and therefore, the petitioner cannot be saddled with payment of double tax again as the tax is already paid by the petitioner at the time of purchase of goods.

5.4 It was therefore, submitted that



the allegations made by the respondent in the impugned show cause notice as well as order-in-original for invoking provisions of section 16(2)(c) of the GST Act are not tenable as the petitioner would not be liable to pay the tax once again which is already paid by the petitioner to its suppliers and if the supplier has not paid the output tax, then the respondent authorities are required to chase the supplier of the petitioner for recovery of outstanding taxes and the petitioner should not be made liable for payment of GST on supplies received by the petitioner.

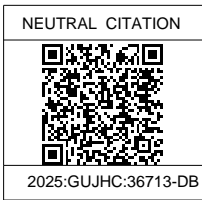
5.5 It was submitted that there is no allegations made against the petitioner in the impugned show cause notice or the impugned order-in-original that the



transaction entered into by the petitioner with one M/s. Parshvi Tradelink company are non genuine and only because supplier of the petitioner has failed to discharge the outward tax liability, no tax can be recovered from the petitioner as per the provisions of section 16(2)(c) of the GST Act.

5.6 It was therefore, submitted that provisions of section 16(2)(c) of the GST Act should be read down so as to see that the petitioner is not made to pay the double taxes on the goods purchased by the petitioner.

5.7 In support of his submission, reliance was placed on the decision in case of Calcutta High Court in case of **Suncraft Energy Pvt. Ltd. v. Assistant**



Commissioner, State Tax, Ballgunge Charge reported in 2023(77) G.S.T.L. 55 (Cal.) and in case of **Lokenath Construction Pvt Ltd. v. Tax/Revenue Government of West Bengal** reported in 2024 (86) G.S.T.L. 130 (Cal.). It was submitted that the Special Leave to Appeal against the decision in case of **Suncraft Energy Pvt. Ltd.** (supra) is dismissed by the Hon'ble Apex Court and as such, decision of Calcutta High Court is confirmed by the Hon'ble Apex Court.

5.8 In support of his submission that provisions of section 16(2)(c) is required to be read down so as to avoid double payment of tax by the petitioner, as the petitioner has already paid tax on the purchase of goods and once again, the petitioner cannot be saddled with tax



liability, reliance was placed on the decision of this Court in case of **New Nalbandh Traders v. State of Gujarat** reported in 2022 (66) G.S.T.L. 334 (Guj.), wherein this Court considering the decision of Hon'ble Delhi High Court in case of **On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi** reported in 2018(10) G.S.T.L. 182 (Del.), has read down Rule 86A for blocking of credit in Electronic Credit Ledger. It was submitted that the decision in case of **On Quest Merchandising India Pvt. Ltd.** (supra), also pertains to reading down of provision of section 9(2)(g) of Delhi Value Added Tax, 2004 which stipulates for disallowance of credit similar to provisions of section 16(2)(c) of the GST Act.



5.9 It was therefore, submitted that the impugned order-in-original passed by the respondent is liable to be quashed and set aside.

5.10 Learned advocate Mr. Trivedi pointed out that decision of Hon'ble Delhi High Court in case of **On Quest Merchandising India Pvt. Ltd.** (supra) is upheld by the Hon'ble Apex Court by dismissing SLP in case of **Commissioner of Trade & Taxes, Delhi v. Arise India Ltd.** reported in (2022) 60 G.S.T.L. 215 (SC), wherein it was held that input tax credit cannot be denied in bona fide transactions by purchaser dealer for non payment of tax by selling dealer.

5.11 Learned advocate Mr. Trivedi



submitted that show cause notice issued by the respondent and order-in-original are on different grounds and the reliance placed on the documents by the respondent adjudicating authority in order-in-original was never disclosed in the show cause notice. It was therefore, submitted that the impugned order-in-original is contrary to the show cause notice and therefore, liable to be quashed and set aside.

6. On the other hand, learned Assistant Government Pleader Ms. Shrunjal Shah for the respondent submitted that supplier of the petitioner is found to be non genuine as demonstrated in order-in-original. Reliance was placed on the following facts which are found by the respondent



authority while disallowing the input tax credit availed by the petitioner on the purchases made from M/s. Parshvi Tradelink which are referred to in the affidavit in reply filed on behalf of the respondent no.2 :

"a) A notice of cancellation of registration in Form REG 17 dated 07.03.2022 was issued by State Tax Officer, Ghatak, 93 Rajkot, Range 23 Division 10, Gujarat to a third Party, M/s. Parshvi Tradelink to its proprietor Mrs. KomalParesh Shah. It is submitted that in the said notice it was stated that due purchases Parshvi to the registration suspected of M/s. Tradelink is liable to be cancelled. Upon verification of Form GSTR-2A of the M/s. Parshvi Tradelink, it was found that Pashavi Trade link had made very little purchases during the year but has supplied in extreme excess of the purchases made. It is submitted that the Petitioner Firm is one of the beneficiaries of the supplies made by M/s Parshvi Tradelink. While the purchases in GSTR 2A show purchases worth Rs. 8,15,184/-, the supply that is made amounts to Rs. 37,72,696/-.



b) Subsequently, on 09.03.2022, a spot verification was undertaken at the principal place of business by the proper officer wherein it was found that no activity was actually being carried out from the said place. Further, the phone number that was registered with the department was not working. It is submitted that a statement of Mrs. Ushaben, the mother-in-law of the proprietor, who happened to be in the vicinity was recorded. In the statement she states that she is not aware of any business in the name of Pashavi Trade Link. It is further submitted that she didn't give the residential address of the proprietor of the firm for further inquiry. A copy of letter Dated 09.03.2022 along with the statement of Mrs. Ushaben is attached herewith as Annexure R-1.

c) It is further submitted that no reply was filed in furtherance to the notice dated 09.03.2022. Therefore, subsequently an order dated 12.04.2022 was passed in Form REG-19 wherein the registration of the said dealer cancelled ab-initio. It is further, submitted that application for till date revocation no of registration has been filed by the said proprietor in the case of Pashavi Trade Link.



d) It is submitted that considering the said facts, the notice in form DRC 01 being the impugned show cause notice dated 28.09.2023 was issued to the petitioners wherein, it was informed to the Petitioners that the ITC Claimed by them is from a tax payer who has not paid tax on their outward supplies to you. Therefore, the Petitioner could file reply against such notice in DRC- 06. Further, time for personal hearing is also granted in the impugned Notice."

6.1 Referring to the above factual averments made on oath by respondent no.2 it was submitted that under section 155 of the GST Act, burden of proof lies on the person who is claiming input tax credit and since the petitioner availed input tax credit from M/s. Parshvi Tradelink whose registration has been cancelled ab-initio, the petitioner has failed to discharge the burden to show the validity of the purchases made from the said supplier. It



was further submitted that the respondent authority has taken into consideration the facts emerging from the record to the effect that the supplier of the petitioner has failed to discharge the outward tax liability and registration was cancelled ab initio vide order dated 12.04.2022.

6.2 Learned AGP Ms. Shah further submitted that in the impugned order-in-original, adjudicating authority has demonstrated as to how the supplier of the petitioner has not paid output tax liability and therefore, the provisions of section 16(2)(c) of the GST Act are applicable to the facts of the petitioner as there is loss of revenue to the respondent State and if the petitioner is aggrieved by payment of tax along with the



purchase value of goods, the petitioner can approach the supplier for recovery of tax which the petitioner is liable to pay by virtue of order-in-original but the respondent State cannot chase the supplier as provided in section 16(2)(c) of the Act.

6.3 It was further submitted that it is not mandatory for the respondent to issue the intimation in Form GST DRC-01A more particularly, in view of amendment of section 142(1A) of the GST Act which is clarificatory in nature. It was further submitted that the issuance of intimation in Form GST DRC-01A is only to intimate the assessee to pay the outstanding tax so as to save penalty. It was therefore, submitted that in absence of Form GST DRC-01A, the impugned show cause notice and



order-in-original cannot be held to be without jurisdiction.

7. Having heard the learned advocates for the respective parties and considering the material placed on record and on perusal of the impugned show cause notice as well as order-in-original and the averments made in the affidavit-in-reply filed on behalf of the respondent no.2 , it appears that supplier of the goods to the petitioner i.e. M/s. Parshvi Tradelinks is a non genuine supplier and the petitioner has not placed on record any material to show that the supplies received by the petitioner are supported by invoices, e-way bill, transport receipt etc. as the petitioner has not provided such details on the ground that there is no allegation



made in the show cause notice against the genuineness of the transactions entered into by the petitioner. However, once it is found by the respondent authority that the supplier of the goods to the petitioner has failed to discharge the tax liability as per the provisions of section 16(2)(c) of the GST Act, the petitioner is liable to pay such tax or input tax credit availed by the petitioner is liable to be reversed. Provision of section 16(2)(c) of the Act reads as under:

"16 - Eligibility and condition for taking input tax credit

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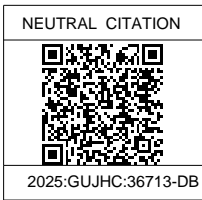
(2)Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, --

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(c) subject to the provisions of [section 41 or section 43A] [Substituted 'section 41' by Act No. 31 of 2018, dated 29.8.2018.], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and..."

8. On perusal of the facts stated in the impugned order-in-original as well as what is stated in affidavit in reply which is not controverted by the petitioner, it appears that the supplier of the petitioner i.e. M/s. Parshvi Tradelink had purchases of Rs.8,15,184/- in the year 2017-2018 as against supplies amounting to Rs.37,72,696/- and for the Year 2018-2019 M/s. Parshvi Tradelink reported purchases of Rs.0(Nil) but its supplies amounted to Rs.1,13,63,616/-. These facts clearly show that supplies received by the petitioner from M/s. Parshvi Tradelink was



not supported by any purchases mad by it and as such, the input tax credit availed by the petitioner in absence of outward tax paid by M/s. Parshvi Tradelink Limited is required to be reversed by the petitioner.

9. In the facts of the case we are not inclined to apply the decision in case of **Suncraft Energy Pvt. Ltd.**(supra) of Calcutta High Court which is followed in **Lokenath Construction Pvt Ltd.** (supra) as the facts before the Hon'ble Calcutta High Court was that there was difference between GSTR-2A and GSTR-3B which was made the basis of disallowance of input tax credit and further Revenue in the said case failed to inquire on the supplier despite clarifications and denial of credit due to supplier's default was held



to be unconstitutional. It is also found by the Hon'ble Calcutta High Court that there was an admission of the fact that assessee had made payment of tax to supplier against transaction and such tax had not been remitted to the State Exchequer, then the elementary principle to be adopted was to cause the inquiry with supplier and without doing so to penalise the petitioner was held to be arbitrary. However in facts of the case the respondent has already made an inquiry of the supplier of the goods to the petitioner and found that no outward tax liability has been discharged by the supplier and as per provisions of section 16(2)(c), the petitioner is rightly held to be liable for reversal of input tax credit availed by it on the supplies



received by the petitioner against which no tax was paid to State Exchequer.

10. With regard to the contention raised on behalf of the petitioner to read down provisions of section 16(2)(c) of the GST Act is concerned, the same cannot be accepted in facts of the case, more particularly, when supplier of the petitioner has not deposited the amount of tax with the State Exchequer and as such, the supplies received by the petitioner are not supported by any payment of tax as the supplier is found to be non genuine in the facts of the case.

11. The contention of the petitioner that as the impugned show cause notice and the order-in-original was passed under section 73 and not under section 74 and therefore,



the respondent authorities have believed the supplies received by the petitioner is genuine is concerned, in view of facts of the case, it is true that respondent authorities have not doubted the supplies received by the petitioner but has stated in the impugned order-in-original as well as the show cause notice that supplier of the petitioner has failed to discharge the tax liability and therefore, the petitioner was required to reverse the input tax credit availed on the supplies received by the petitioner. However, we are of the opinion that penalty imposed by the respondent authorities is not required to be levied in absence of intimation issued in Form GST DRC-01A by the respondent authorities and as such, the impugned order is modified to that extent



and penalty levied in the impugned order is quashed and set aside. However the rest of the order-in-original is hereby confirmed. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR