NEUTRAL CITATION
2026:GUJHC:47110-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7535 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

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Approved for Reporting	Yes	No
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M/S AARYA METALS & ORS.
Versus
THE STATE OF GUJARAT & ANR.

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Appearance:
MR ABHAY Y DESAI(12861) for the Petitioner(s) No. 1,2,3
MS NIMISHA PAREKH, AGP for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 28/07/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. ***Rule***. Learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondents.

2. At the outset, learned advocate Mr.Abhay Y. Desai, appearing for the petitioners has submitted that the issue involved in the present petition is squarely covered by the decision of this Court in the case of Aarti Enterprise Vs. State of Gujarat, (2026) 39 Centax 31 (Gujarat).

3. Learned Assistant Government Pleader Ms.Nimisha Parekh, was unable to controvert the aforesaid proposition.

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4. A short issue involved in the present writ petition pertains to the absence of intimation regarding the date, time and venue of personal hearing in the show-cause notices issued to the petitioners, which ultimately culminated in the impugned order.

5. The respondent-Commissioner issued a show-cause notice dated 04.08.2024 under Section 74(1) of the Central Goods and Services Tax Act, 2017 (for short, "the CGST Act"), seeking to recover Input Tax Credit (ITC) of Rs.7,63,026/- along with applicable interest under Section 50 of the CGST Act. It was alleged that the inward supplies received from M/s.RK Battery and Scrap were non-genuine, as the supplier was found to be a non-genuine and non-existent taxpayer. Consequently, the ITC was alleged to be inadmissible under Section 16(2) of the CGST Act.

6. It is the case of the petitioners that they were never aware of the aforesaid show-cause notice. Thereafter, the respondent authorities issued three reminders dated 12.09.2024, 07.11.2024, and 18.11.2024. The petitioners submitted a reply dated 21.11.2024 along with the tax invoices issued by the supplier. However, the respondent authorities proceeded to pass the impugned order dated 07.12.2024 in FORM GST DRC-07.

7. It is submitted that the impugned order deserves to be quashed and set aside since neither the show-cause notice nor the subsequent reminders specified the date, time, or venue of personal hearing. It is further submitted that the reminders also reflected "N.A." against the particulars of the date, time,

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and venue of personal hearing, thereby depriving the petitioners of an effective opportunity of hearing. It is further submitted that the impugned order is a non-speaking, one-line order and is liable to be quashed in light of the decision of this Court in the case of ***Aarti Enterprise (supra)***.

8. Opposing the writ petition, learned AGP Ms. Nimisha Parekh has submitted that the petitioners were issued three reminders. She has further submitted that although the petitioners had responded to the proceedings, they had selected "No" in the column relating to personal hearing and they were fully aware of the proceedings. Hence, she has submitted that the writ petition does not deserve to be entertained.

9. From the pleadings on record, the following facts emerge:

A. The petitioners were initially issued a show-cause notice dated 04.08.2024 under Section 74(1) of the CGST Act seeking recovery of ITC amounting to Rs.7,63,026/-.

B. The show-cause notice did not specify the date, time, or venue of personal hearing.

C. The respondent authorities thereafter issued three reminders dated 12.09.2024, 07.11.2024, and 18.11.2024, which also failed to specify the date, time, or venue of personal hearing.

10. It appears that the petitioners thereafter filed a reply in FORM GST DRC-06 on 21.11.2024, wherein they had selected "No" against the column relating to personal hearing.

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Thereafter, the respondent authorities passed the two line impugned order directing recovery of the aforesaid amount along with interest and penalty.

11. At this stage, it would be apposite to refer to the decision of this Court in the case of ***Aarti Enterprise*** **(supra)**, wherein, on an identical issue, this Court has held as under:

> *"5.1 Thereafter, the petitioner has been issued reminders on 31.12.2024, 08.01.2025 and 17.01.2025, three reminders as required under the provisions of Section 75(5) of the G.S.T Act. On a bare perusal of the same, it is revealed that the petitioner is not intimated of either the date, time or venue of personal hearing and thereafter the impugned order is passed by recording that though an ample opportunity was granted to the petitioner to remain present, he has not remained present. This is the only reason which is assigned in the impugned order. It is not in dispute that three opportunities are required to be given and as per provisions of section 75(5) of the G.S.T Act, three adjournments are required to be given. Section 75 of the G.S.T Act reads 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 sub-sections (2) and (10) of section 74 [or sub-sections (2) and (7) of section 74A], 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 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.*
> >
> > *[(2A) Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under clause (ii) of sub-section (5) of section 74A is not sustainable for the reason*

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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 penalty shall be payable by such person. under clause (1) of sub-section (5) of section 74A].

(3) Where any order is required to be issued in pursuant 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 the period specified in sub-section (10) of section 73 or in sub-section (10) of section 74 or in sub-section (7) of section 74A.

(11) An issue on which the Appellate Authority or the

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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 sub-section (10) of section 74 [or sub-sections (2) and (7) of section 74A] 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 [or section 74A], 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 [Explanation.-For the purposes of this sub-section, the expression "self-assessed tax shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.] (13) Where any penalty is imposed under section 73 or section 74 [or section 74A], no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act."

5.2 We are of the considered opinion that in case the aforesaid details of personal hearing are not incorporated in the notice DRC 01, before final order is passed against the assessee, he is required to be intimated the date, time and venue of personal hearing. We further clarify that respondents are not in fact required to issue Show Cause Notice calling upon him, but they are required to intimate the date, time and venue of personal hearing.

5.3 The second ground on which the impugned order is required to be set aside is that the same is absolutely an unreasoned order as though, the petitioner has remained absent in the proceedings, however, the same cannot absolve the State Tax Officer in passing the reasoned order after considering all the materials.

6 Hence, the writ petition succeeds. The impugned order dated 05.02.2025 issued by the respondent No.2 and subsequent proceedings arising from the impugned orders are hereby quashed and set aside. The matter is remanded to the jurisdictional State Tax Officer. He shall pass a fresh order after affording an opportunity of

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hearing to the petitioner an in accordance with law within a period of 12 weeks from the date of receipt of certified copy of this order. Rule is made absolute accordingly with no orders as to costs. "

12. We may also refer to the decision of this Court in the case of Komal Jayeshbhai Hemavat vs. State Tax Officer, (2026) 185 taxmann.com 500 (Gujarat), wherein this Court set aside an order passed under Section 75(4) of the CGST Act even though the assessee had selected "No" in the column relating to personal hearing. The relevant observations read as under:

7. It was incumbent upon the authority to follow the mandate of Section 75(4) of the GST Act and grant opportunity of further hearing. This Court in the decision in the case of M/s. Yadav Trailor Transport Co. Vs. Union of India And Ors., rendered in Special Civil Application No. 3027 of 2025, has held as under:

" 9.1 It has been categorically observed by this Court in the case of Regent Overseas Pvt Ltd (supra), that when three dates had been granted, it would tantamount to adjournments. However, the provisions of Sub-section (2) of Sec.33A of the Act provides for three adjournments, therefore, that would amount to 4 days and 3 adjournments. For ready reference, the observations made by this Court in the case of Regent Overseas Pvt Ltd (supra), are reproduced:

"12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates apepars to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of section 33A of the Act. In this regard, it may be noted that sub-section (2) of section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates for personal hearing.

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> *13. As discussed hereinabove, in view of the fact that the notice for personal hearing was not served upon the petitioners in accordance with law, no one could remain present for personal hearing on behalf of the petitioners on the dates specified in the notice and the adjudicating authority has proceeded on the footing that three adjournments have been granted and has passed the impugned ex parte order Such order is, therefore, clearly in breach of the principles of natural justice warranting interference by this court in exercise of powers under Article 226 of the Constitution of India.*"

9.2 In wake of such submissions, the Order-in-Original is passed against the settled legal position and in breach of principles of natural justice.

9.3 It is not in dispute that the petitioner was not heard before passing of the Assessment Order. It is fundamental proposition of law that other side should be heard before any order is passed. The maxim of Audi Alteram Partem is broad enough to include the rule against bias since a fair hearing is must for it to be unbiased hearing. The essential ingredients of fair hearing is that a person should be served with a proper notice and should be given a right to hearing. 10 For the foregoing reasons, the impugned Order-in-Original dated 31.03.2023 passed under the Finance Act, 1994, as well as the Order-in- Appeal dated 25.06.2024 is hereby quashed and set aside and the matter is remanded back to the Adjudicating Authority to de novo hear the petition and decide the same in accordance with law after affording adequate opportunity of hearing to the petitioner. Such exercise shall be completed within a period of 12 weeks from the date of receipt of copy of this order.

It is clarified that this Court has not gone into merits of the matter. Rule is made absolute to the aforesaid extent. No order as to costs."

8. As per the provisions of Section 75(4) of the GST Act, the respondents are supposed to grant three opportunities of personal hearing before passing any adverse orders. Hence, the stand remains uncontroverted.

9. Accordingly, the writ petition is allowed. The impugned order is hereby quashed and set aside. The matter is remanded back to the respondent authorities to pass a fresh order within a period of 12 weeks. Rule is made absolute. No order as to costs."

13. Thus, the impugned order deserves to be quashed and set aside on three grounds: first, the failure of the respondent

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authorities to intimate the date, time, and venue of personal hearing; second, the passing of a non-speaking order; and third, the failure to afford the petitioner three opportunities of personal hearing as contemplated under Section 75(4) of the CGST Act.

14. Accordingly, the writ petition ***succeeds***. The impugned order is quashed and set aside and the matter is remanded to the jurisdictional State Tax Officer, who shall pass a fresh order after affording the petitioners an opportunity of hearing in accordance with law, within a period of twelve weeks from the date of receipt of the certified copy of this order. Rule is made absolute to the aforesaid extent.

15. It is clarified that since the impugned order has been set aside, the petitioners' claim for refund along with interest shall remain subject to the fresh order that may be passed by the respondent authority after considering the defense that may be raised by the petitioners in the remanded proceedings.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

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