

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 2951 of 2025**

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AJAY INDUSTRIES & ANR.

Versus

UNION OF INDIA & ORS.

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Appearance:

UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2

MS SHRUNJAL SHAH, AGP for the Respondent(s) No. 2,3,4

SHASHVATA U SHUKLA(8069) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE D.N. RAY**Date : 16/04/2025****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr. Uchit N. Sheth for the petitioners and learned Assistant Government Pleader Ms. Shrunjal Shah for the respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs :

"A. This Hon'ble Court may be pleased to



issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order quashing and setting aside the impugned show cause notice dated 28.9.2023 issued for the year 2017-18 (annexed at Annexures A) as being wholly without jurisdiction, arbitrary, mechanical and illegal and all the proceedings consequent to such show cause notice may also therefore be quashed and set aside;

B. This Hon'ble Court may be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ or order quashing and setting aside impugned order dated 21.12.2023 passed in Form GST DRC-07 (annexed at Annexure B) as being wholly without jurisdiction, non-speaking, passed in breach of principles of natural justice, arbitrary and illegal;



C. Without prejudice to the above and in the alternative, this Hon'ble Court may be pleased to strike down and declare Section 107(4) of the GST Acts in as much as it debars appellate authority from condoning delay in filing appeals even in case where the taxable person is in a position to satisfactorily explain the delay as being manifestly arbitrary, discriminatory and violating Articles 14 and 19(1)(g) of the Constitution of India;

D. Without prejudice to the above and in the alternative, this Hon'ble Court may be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ or order quashing and setting aside impugned appeal order dated

28.11.2024 (annexed at Annexure J) and the matter may be remanded to the appellate authority for deciding the case on merits;

E. Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to restrain the Respondents to make coercive recovery pursuant to the adjudication order in Form GST DRC-07;

F1. This Hon'ble Court may be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order quashing and setting aside the impugned bank attachment notice dated 4.3.2025 (annexed at Annexure A1) as being wholly arbitrary, bad and illegal;

F2. Pending notice, admission and final hearing the Respondents may be directed



to forthwith release attachment of bank accounts and withdraw the impugned garnishee notice dated 4.3.2025 (annexed at Annexure A1);

F3. Ex parte ad interim relief in terms of prayer F2 may kindly be granted;

G. Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioners shall forever pray."

3. The brief facts of the case are as under :

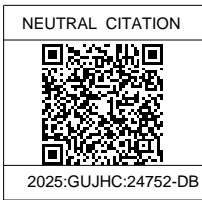
3.1. The petitioner No.1 is a partnership firm and engaged in business of manufacture and sale of cotton seed oil and duly registered under the provisions of the Central/State Goods and Services Tax Act, 2017 (for short



'the GST Act').

3.2. It is the case of the petitioner that the cotton seed oil manufactured by the petitioner is taxable under the GST Act and therefore, the Input Tax Credit is admissible under Section 16 of the GST Act, however, by product/waste product i.e. cotton oil cake is exempt from tax under the provisions of the GST Act. The petitioner therefore believed that since the exempt by product/waste product was incidentally generated during the course of manufacture, the petitioner was entitled to full Input Tax Credit and accordingly, filed monthly returns as well as the annual returns for the Financial Year 2017-18.

3.3. It is the case of the petitioner that upon being advised that non-reversal of Input Tax Credit could lead to demand being raised



by the authorities, the petitioner reversed proportionate Input Tax Credit under Section 17(2) of the GST Act to the extent of ratio of turnover exempt supplies vis-a-vis total turnover and such reversal for the Financial Years 2017-18 and 2018-19 was done in the monthly return in Form GSTR-3B filed for the month of March, 2020.

3.4. The petitioner however, received a show-cause notice dated 28.09.2023 under Section 73 of the GST Act proposing demand mainly on the ground of non-reversal of the Input Tax Credit attributable to the exempt supplies along with other miscellaneous issues.

3.5. The petitioner by letter dated 28.10.2023 uploaded on portal requested for time due to Diwali holidays.

3.6. It is the case of the petitioner that



thereafter, the respondent uploaded one reminder on 12.12.2023 which was not noticed by the petitioner and thereafter, without granting mandatory personal hearing as provided under Section 75(4) of the GST Act, impugned order dated 21.12.2023 was passed by the respondent-Authority confirming the demand as per the show-cause notice without noticing the fact that the Input Tax Credit sought to be disallowed has already been reversed by the petitioners.

3.7. It is also the case of the petitioner that the impugned order dated 21.12.2023 was not served upon to the petitioner physically or through registered Email address and it appears that order was only uploaded on the portal by the authority and the petitioner was not aware about such order being passed.



3.8. The respondent-Authority thereafter attached the Demat Account of the petitioner on 24.05.2024. The petitioner therefore came to know about the impugned order and preferred an Appeal under Section 107 of the GST Act with an application to condone the delay, however, the First Appellate Authority rejected the Appeal by order dated 28.11.2024 on the ground that uploading of the impugned order on the portal was a valid mode of service and the Appellate Authority has no power to condone the delay.

3.9. The respondent-Authority also attached the Bank Account of the petitioner by notice dated 04.03.2025 for recovery of the outstanding dues as per the Order-in-Original dated 21.12.2023. The petitioner therefore amended the petition which was allowed by this Court by order dated 13.03.2025.



3.10. This Court passed the following order on 21.03.2025 :

"1. Heard learned advocate Mr.Uchit N. Sheth for the petitioners and learned Assistant Government Pleader Mr.Raj Tanna for the respondent Nos.2,3 and 4.

2. This Court passed the following order on 13.03.2025 :

"In view of the order passed today in Civil Application (For Amendment) No.1 of 2025 in Special Civil Application No.2951 of 2025, the petitioners to carry out the amendment forthwith.

Heard Mr. Uchit Sheth for the petitioners and learned AGP Mr. Raj Tanna for the respondent-State on advance copy.



Learned advocate Mr. Uchit Sheth for the petitioners submitted that the petitioners have challenged the jurisdiction of the respondent authority to issue the show cause notice as the same is based upon the incorrect facts more particularly when the petitioners have reversed the ITC which is not taken into consideration while issuing the show cause notice. It was further submitted that the petitioners were not aware about the passing of the order in original and therefore there was delay of 86 days in preferring the appeal.

Learned advocate Mr. Uchit Sheth for the petitioners further submitted that the respondents have attached the bank account of the petitioners



for the recovery of the outstanding dues of approximately Rs.25,00,000/- and the petitioners are ready and willing to deposit Rs.5,00,000/- to show the bonafide during pendency of this petition as a condition for lifting the attachment.

Learned AGP Mr. Raj Tanna for the respondent-State to take instructions.

Issue notice, returnable on 21/03/2025. Direct service through e-mail is permitted.

To be listed on top of the board. "

3.1. Learned advocate Mr.Uchit Sheth for the petitioners submitted that in compliance of the aforesaid order, the petitioners have deposited Rs.5,00,000/- with the respondent-



Authority on 13.03.2025 and the affidavit to that effect is placed on record.

3.2. It was therefore submitted that the bank accounts of the petitioners may be ordered to be detached.

4. Learned Assistant Government Pleader Mr.Raj Tanna appearing for the respondent Nos.2,3 and 4 submitted that in view of the deposit of Rs.5,00,000/- by the petitioners, the respondents shall pass necessary order for detaching the bank accounts of the petitioners within a period of one week from today.

5. In view of the aforesaid statement, the respondents are directed to pass an order of lifting the attachment on the



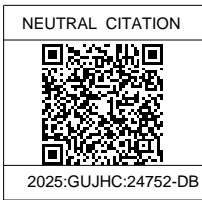
*bank accounts of the petitioners being
Bank Account Nos. 07472000000083 and
01012320009035 with HDFC Bank.*

6. Stand over to 28th March, 2025."

4.1. Learned advocate Mr.Uchit Sheth for the petitioner submitted that in compliance of the order dated 21.03.2025, the attachments over the Bank Accounts have been lifted by the respondent.

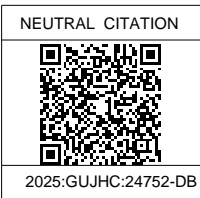
4.2. It was further submitted that the petitioner was not aware about the impugned order being passed and therefore, there is also a breach of Section 75(4) of the GST Act.

4.3. It was further submitted that the petitioner has reversed the proportionate Input Tax Credit for the Financial Years 2017-



18 and 2018-19 in the returns filed for the month of March, 2020 and this fact is also mentioned in the reconciliation statement in Form GSTR-9C for the year 2019-20. It was submitted that the respondent-Authority without considering the record has passed the impugned Order-in-Original by raising the demand of the Input Tax Credit which is already reversed by the petitioner prior to issuance of the show-cause notice.

4.4. Learned advocate Mr.Uchit Sheth also referred to the amended provisions of Section 16(5) of the GST Act which provides for extension of time limit for claiming Input Tax Credit for the years 2017-18 to 2020-21 in any return under Section 39 of the GST Act filed up to 30.11.2021. It was therefore submitted that the claims of Input Tax Credit could be



finalised up to 30.11.2021 and the petitioner has admittedly reversed the Input Tax Credit in the return filed for the month of March, 2020 and therefore, there was no delay by the petitioner in reversing the Input Tax Credit.

4.5. It was therefore submitted that the respondent-Authority ought to have considered the fact of reversal of Input Tax Credit by the petitioner before passing the impugned Order-in-Original.

5. On the other hand, learned Assistant Government Pleader Ms.Shrunjal Shah for the respondent-Authority submitted that the petitioner failed to file any reply to the show-cause notice issued by the respondent-Authority and therefore, the impugned order was passed considering the fact that the petitioner had claimed the Input Tax Credit



even on the exempted goods being the by product/waste product of manufacture of cotton seed oil. It was therefore submitted that the petitioner ought to have reversed the Input Tax Credit within the time prescribed under Section 39 of the GST Act and therefore, the petitioner could not have claimed the Input Tax Credit over the exempted goods and therefore, the impugned Order-in-Original dated 21.12.2023 passed under Section 73 of the GST Act directing the petitioner to make payment amounting to Rs.58,08,042/- including interest and penalty is just and proper as the petitioner has failed to file any reply in spite of ample opportunity was provided by the respondent-Authority.

5.1. It was submitted that repeated reminders have been made for valid compliance of Section 75(4) as well as Section 75(5) of the GST Act



by putting the petitioner to notice before the adverse order being passed by the respondent-Authority. It was submitted that in spite of the repeated reminders, the petitioner failed to respond, resulting into the impugned Order-in-Original raising the demand.

5.2. It was also pointed out that the impugned order dated 21.12.2023 was uploaded on the GSTN Portal on the very same day and hence, in view of the provisions of Section 169(d) of the GST Act, the impugned order is deemed to have been valid and legally served upon the petitioner. Learned Assistant Government Pleader Ms.Shrunjal Shah therefore submitted that no interference is required to be made by this Court in the impugned order while exercising the extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution



of India.

5.3. Learned Assistant Government Pleader Ms.Shrunjal Shah further submitted that Section 15(5) of the GST Act, amended with effect from 06.08.2024 by Finance Act No.2 of 2024, only provides for entitlement to take Input Tax Credit in any return under Section 39 of the GST Act for the Financial Years 2017-18 to 2020-21 which was left out, however, Section 39 of the GST Act is not amended and Sub-section (9) of Section 39 provides that where any registered person after furnishing return under Sub-sections (1) to (5) discovers any omission or in correct particulars wherein, rectification of such omission or incorrect particulars subject to payment of interest can be done provided that no such rectification of any omission or



incorrect particulars shall be allowed after expiry of 30th Day of November following the end of the financial year to which such details pertain for actual date of furnishing relevant annual return which ever is early. It was therefore submitted that the petitioner ought to have reversed the Input Tax Credit before 30th November following end of the financial year to which the details pertain and therefore, the impugned order is passed for breach of provisions of Section 39(9) of the GST Act by the petitioner.

6. Having heard the learned advocates for the respective parties and on perusal of the material available on record as well as the affidavit-in-reply filed on behalf of the respondent, it is not denied that the petitioner has reversed the Input Tax Credit prior to issuance of the show-cause notice. It



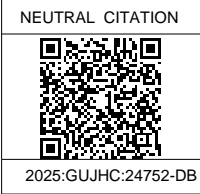
also appears that only because the petitioner could not file the reply to the show-cause notice pointing out such facts, resulted into passing the impugned Order-in-Original under Section 73 of the GST Act on the ground that the petitioner did not reverse the Input Tax Credit within the time prescribed under Section 39 of the GST Act.

7. However, in view of the amended provisions of Section 16(5) of the GST Act, the petitioner is entitled to file returns for claiming Input Tax Credit for financial years 2017-18 to 2020-21 but in the facts of the case, the petitioner has incorrectly claim the Input Tax Credit on the exempted goods which was required to be reversed as per proviso to Section 39(9) of the GST Act, however, the petitioner has reversed such Input Tax Credit beyond the time prescribed under Section 39(9)



of the GST Act and therefore, the respondent-Authorities without considering the fact that the petitioner has already reversed the Input Tax Credit has again asked the petitioner to reverse the Input Tax Credit resulting into double payment of tax by the petitioner, instead, respondent-Authorities ought to have issued the show-cause notice for interest or penalty to be levied for late reversal of the Input Tax Credit by the petitioner as per the provisions of Section 50 of the GST Act.

8. Be that as it may, in the facts of the case as the petitioner has not filed any reply in spite of providing sufficient opportunity by the respondent-Authority and considering the fact that there was already reversal of the Input Tax Credit, the respondent-Authority without verifying the data available on the GSTN portal has passed the impugned order



relying only upon the provisions of Section 39(9) of the GST Act.

9. Therefore, the impugned show-cause notice which ought to have been issued for the purpose of levy of interest or penalty for late reversal of Input Tax Credit by the petitioner and not for availing of the Input Tax Credit by the petitioner on the exempted goods. In such circumstances, the respondent-Authority was either required to pass an order to recredit the Input Tax Credit already reversed by the petitioner with retrospective effect or to charge only interest and penalty as per the provisions of the GST Act.

10. Considering the above discussion regarding the facts emerging from the record and the provisions of the Act, the impugned Order-in-Original is quashed and set aside and the



matter is remanded to the respondent-Authority to pass a fresh de-novo order after providing an opportunity of hearing to the petitioner in accordance with law and consider the amount deposited by the petitioner accordingly. The petition is accordingly disposed of. Notice is discharged.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

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