

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 10441 of 2024**

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GRASIM INDUSTRIES LTD.

Versus

UNION OF INDIA & ORS.

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Appearance:

MR DHAVAL SHAH(2354) for the Petitioner(s) No. 1

MR CB GUPTA(1685) for the Respondent(s) No. 1,2,3

MR SIDDHARTH H DAVE(5306) for the Respondent(s) No. 4

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE D.N. RAY**Date : 02/04/2025****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned Senior Advocate Mr. Mihir Joshi with learned advocate Mr. Dhaval Shah for the petitioner and learned Senior Advocate Mr. C. B. Gupta for the respondents.

2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 25/04/2024 confirming the demand and order to recover wrongly availed ITC of IGST of Rs.20,62,94,592/- as well as confirming the demand and order to recover wrongly availed ITC of IGST of Rs.24,49,75,711/- under Section 73(1) of the

CGST Act, 2017 read with Section 20 of the IGST Act, 2017 along with interest and penalty.

3. The petitioner has also prayed for quashing and setting aside the order dated 04/07/2024 rejecting the application of rectification of the order dated 25/04/2024 on the ground that there was no error apparent on the face of the record in the said order and the said order was a reasoned and speaking in itself and was passed following the due process of natural justice.

4. This is a classic case of negligence and dereliction of duty on part of respondent no.4 which we will demonstrate in our order.

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

5.1. The petitioner is engaged in manufacturing of Viscose Filament Yarn and allied chemicals. After manufacture of the Viscose Filament Yarn, the petitioner transferred the same to various depots/godowns/warehouses in different states upon payment of GST under the tax invoices for onward sales to

distributors and sellers. The factory of the petitioner situated at Maharashtra is registered under the GSTIN No.27AAACG4464B1ZY and various godowns of the petitioner are located at multiple locations in the State of Gujarat including Surat. The godown situated at Surat received the goods from the factory at Maharashtra and other warehouses/godowns across the India. The warehouse/godown situated at Surat is registered under the GSTIN No.24AAACG4464B7ZY with effect from 14/09/2018.

5.2. It is the case of the petitioner that all the goods received at the godown/warehouse at Surat on which the Input Tax Credit (ITC) of the GST paid is taken/claimed, including the ITC under disputes, was by way of stock transfer from other factories/units of the petitioner which are located across India. The petitioner, after September, 2018, took separate fresh registration for its godown at Surat in addition to the single registration of VFY trade/business in the State of Gujarat under GSTIN No.24AAACG446B5Z0.

5.3. It is the case of the petitioner that while issuing the invoice for stock transfer of the finished goods manufactured

at its factory in Maharashtra to its godown/warehouses at Surat during the Financial year 2018-2019, the Maharashtra Factory correctly stated new registration number on the invoices and stock transfer and the payment of GST on such stock transfer by the Maharashtra factory is not disputed by the jurisdictional GST Officers in Maharashtra. In addition to the goods received from the factory at Maharashtra, the godown at Surat of the petitioner also received certain goods from another warehouses in Delhi under the tax invoices disclosing new registration number after depositing the applicable GST on the said stock transfer to Surat warehouse/godown which is also not disputed by the jurisdictional authorities at Delhi.

5.4. It is the case of the petitioner that on the basis of the invoices received from the Maharashtra and Delhi, the godown situated at Surat availed the Input Tax Credit of the GST paid which was disclosed in the return filed in Form GSTR-3B under the new GSTIN registration. However, inadvertently while filing the return in Form GSTR-I for Financial Year 2018-2019, output supplies i.e. stock transfer valued at Rs.1,71,95,55,284/- made by the factory in

Maharashtra and Rs.8,67,846/- made by godown/warehouse in Delhi on which total GST of Rs.20,64,50,776/- was paid, the old GSTIN No.24AAACG4464B5Z0 was stated instead of the new GSTIN No.24AAACG446B7ZY.

5.5. Upon realizing the error of disclosure of the wrong GSTIN in the return filed in the Form GSTR-1, the petitioner rectified the same within the time prescribed under Section 37(3) of the GST Act by making the suitable amendments/disclosure in Table 9 of the returns filed for the month of April 2019, June, 2019, July 2019 and August 2019 in Form-GSTR-1 in Maharashtra and Delhi.

5.6. It is also the case of the petitioner that apart from mentioning of wrong GSTIN number in Form-GSTR-I which was later on corrected in respect of three invoices out of 1548 invoices which were rectified, one invoice dated 28/02/2019 was inadvertently not rectified and in two invoices, there were some inadvertent errors in rectification which were issued from the factory at Maharashtra.

5.7. It appears that the rectification made by the petitioner

as per the provisions of Section 37(3) of the GST Act, the same is reflected in Form-GSTR-2A of the new GSTIN Number for the Financial Year 2019-2020 under the head "B2B amendment".

5.8. It is also the case of the petitioner that the rectification was reflected in GSTR-2A for the new GSTIN No.23AAACG4464B7ZY for the year under consideration in the auto-populated figure in the Table 8A of GSTR-9 of the petitioner.

5.9. A notice dated 01/08/2023 was issued by the Superintendent of Central GST regarding purported Excess ITC availed and ITC availed without remittance of tax by the supplier proposing to levy cumulative penalty of Rs.45,12,70,303/-. The petitioner filed a reply dated 25/08/2023 to provide the details for arriving at a cumulative demand stated in the notice along with the Form-GSTR-1 and Form-GSTR-9C for the three years from 2018-2019 onwards.

5.10. The petitioner thereafter received the e-mail dated 25/01/2024 along with the intimation in Form-DRC-01A to pay

tax of the aforesaid amount. As the petitioner was not in agreement with the contents of the aforesaid intimation to pay tax, vide its e-mail dated 26/01/2024 filed detailed objections to the same reiterating the submissions made vide e-mail dated 25/08/2023.

5.11. It is the case of the petitioner that without considering the submissions made by the petitioner in the e-mail dated 25/08/2023, a show cause notice dated 31/01/2024 in Form-GSTDRC-01 was issued to the petitioner by respondent no.3 inter alia calling upon the petitioner to show cause as to why the wrongly availed and utilized ITC should not be demanded along with interest and penalty.

5.12. The petitioner, by letter dated 29/02/2024, filed detailed reply contending that the record of the petitioner indicates that the suppliers erroneously uploaded invoices to wrong GSTIN in Financial Year 2018-2019 and subsequently rectified the same and GSTR 2A for Financial Year 2019-2020 evidence the rectification by the supplier which has not been considered and for Financial Year 2020-2021, as per GSTR-2A, the correct figures have been captured and therefore

there was no excess ITC availment by the petitioner.

5.13. Thereafter personal hearing was granted on 11/03/2024 to the petitioner and order in original dated 25/04/2025 was passed by respondent no.4 confirming the demand as per the show cause notice along with interest and penalty on the ground that the petitioner has contravened the provisions of Section 16(2) of the CGST Act by wrongly availing and utilizing the ITC amounting to Rs.24,49,75,711/- and ITC of Rs.20,64,94,592/- on the invoices on which the supplier has not paid the tax and thus violation of Section 16(2)(c) has been done by the petitioner.

5.14. Being aggrieved by the impugned order and in view of the multiple errors apparent on the face of the record, the petitioner filed three online applications for rectification of mistakes on 20/05/2024 under Section 161 of the CGST Act for rectification of errors/mistakes stated therein. Respondent no.4, however, without considering the contents of the application and without affording any opportunity of hearing, passed a cryptic and non-speaking order dated 04/07/2024 disposing of the rectification applications filed by the

petitioner observing that, there are no sufficient reasons/grounds for re-consideration of OIO No.Surat/GST/CLS/03/2024-2025 dated 25/04/2024 for rectification purpose under Section 161 of the CGST Act, 2017 as no error apparent on the face of record in the said order is seen and the order is reasoned and speaking in itself and has been passed by following due principles of natural justice.

6. Being aggrieved, the petitioner has preferred this petition with the aforesaid prayers.

7. Learned Senior Advocate Mr. Mihir Josh appearing with Mr.Dhaval Shah and learned advocate Mr. Mihir Mehta for the petitioner submitted that the impugned orders passed by respondent no.4 shows preconceived mindset and in fragrant breach of the principles of natural justice, inasmuch as, the reply dated 25/08/2023 filed by the petitioner followed by the reply and response to the show cause notice in Form-DRC-01 has given a complete reconciliation of the ITC availed by the petitioner for the goods received at the warehouse/godown at Surat from factory at Mumbai and the godown at Delhi. It was submitted that the inadvertent mistake of showing wrong

GSTIN number in Form-GSTR-1 was rectified for the Financial Year 2018-2019 which is already reflected in the Form-GSTR-9 in Financial Year 2019-2020.

8. Learned Senior Advocate Mr. Mihir Joshi referred to the averments made in the memo of the petition to demonstrate the rectification done by the petitioner in para-B.10 to para-B.12 which reads as under:

“B.10. In this regard, the correct values/amounts pertaining to the availment of ITC for which the dispute is raised are tabulated below:

Particulars	FY19	FY20	FY21
<i>ITC as per GSTR-2A as per table 8(A) (Table 3 & 5 thereof) of GSTR 9 CGST+SGST+IGST</i>	26,57,08,356	59,70,94,900	39,19,97,162
<i>ITC availed as per GSTR-3B as per GSTR-9 CGST+SGST+IGST (Including RCM & ISD)</i>	26,65,02,192	59,64,77,781	39,24,89,207
<i>ITC available as per updated GSTR-2A (Including RCM & ISD)</i>	5,99,42,425	80,25,25,737	39,26,22,217

B.11.The aforesaid values clearly reflect that the rectification done by the Maharashtra factory and the Delhi godown/warehouse of the Petitioner in disclosing the correct GSTIN in the returns filed in Form GSTR-1 for FY 2018-19 is getting reflected in FY 2019-20.

B.12.Apart from the above, for ease of reference, the Petitioner has further tabulated below the details considering the correct values, in view of the rectification of error in the returns in Form GSTR-1 filed

by the Maharashtra Unit & Delhi Unit of the Petitioner.

Particulars	FY19	FY20
<i>ITC as per GSTR-2A (Auto populated) as per table 8(A) (Table 3 & 5 thereof) CGST+SGST+IGST</i>	26,57,08,356	59,70,94,900
<i>ITC availed as per GSTR-3B as per GSTR-9 CGST+SGST+IGST</i>	26,65,02,192	59,64,77,781
<i>ITC eligible (CA certificate attached)</i>	26,65,02,192	59,64,77,781

Hereto annexed and marked as Annexure “T” and Annexure “U” are the aforesaid details of correct figures/values duly certified by a Chartered Accountant. Due to size constraints, only relevant extract (first and last page) of the Annexure to the Chartered Accountant’s certificate annexed at Annexure U is annexed and the Petitioner crave leaves to add and rely upon the copy of the entire annexure as and when produced.”

8.1. Referring to the above, it was submitted that considering the impact of the rectification done in returns filed in Form-GSTR-1, there is no excess availment of the ITC by the petitioner except the minor difference on account of the three invoices.

9. It was submitted that the submissions of the petitioner was reproduced in the impugned order and thereafter respondent no.4 has an audacity to observe that “the petitioner has failed to produce any such documents to the

adjudicating authority during the course of personal hearing as well as through written submission". It was submitted that inspite of placing entire record and the rectification and reconciliation by the petitioner, respondent no.4 without application of mind has passed the impugned order and quashed and set aside the rectification application in one line stating the no error apparent on record is seen. It was therefore submitted that the impugned orders are passed with total non-application of mind by respondent no.4.

10. Learned Senior Advocate Mr. Mihir Joshi referred to the affidavit-in-reply filed on behalf of respondents nos.1 to 4 in support his submissions which clearly states that on further examination of the petitioner, a report is made to the DG Audit (Central) confirming the admissibility and correctness of ITC availed by the petitioner and that the difference were due to the amendments made by the supplier in the GSTR-1 returns after initial filing which caused apparent mismatch but did not indicate actual non-payment of tax. It was therefore submitted that the impugned order is passed without considering and examining the record contrary to the provisions of Section 16(2) of the Act and the same is liable to

be quashed and set aside.

11. On the other hand, learned Senior Advocate Mr. C. B. Gupta for the respondents, referred to and relied upon the affidavit-in-reply filed on behalf of respondents no.1 to 4 as well as the copy of the compliance report dated 25/03/2025 which is also placed on record during the course of hearing and submitted that though respondent no.4 has passed impugned order raising the demand, after passing of the order and on careful examination of the record and that submissions of the petitioner, reconciliation statement and audit findings and the verification report submitted by the Jurisdictional Assistant Commissioner and Range Superintendent, it is confirmed that the alleged mismatch in Input Tax Credit arose due to data processing discrepancies rather than any actual non-compliance or evasion of taxes.

12. Learned Senior Advocate Mr. C. B. Gupta for the respondents referred to and relied upon the averments made in the affidavit-in-reply filed on behalf of respondents no.1 to 4, which reads as under:

“9. In respect of the audit observation regarding excess availment of Input Tax Credit (ITC) amounting to 24,49,75,711/-, arising from a comparison between the ITC availed by the Petitioner in GSTR-3B Returns and the ITC reflected in FORM GSTR-2A for the Financial Years 2018-19 and 2020-21, it is submitted that the Petitioner duly clarified that the alleged discrepancy was occasioned due to subsequent rectifications carried out by their suppliers in relation to the GSTINs mentioned in certain tax invoices. The claim of the Petitioner has been duly examined and verified by the departmental officers, and a compliance report has been furnished in response to the objections raised by the officers of DG Audit (Central), IAAD, Ahmedabad, confirming the admissibility and correctness of the ITC availed by the Petitioner.

10. In respect of another audit observation regarding alleged irregular availment of Input Tax Credit (ITC) amounting to ₹20,62,94,593/-, on the ground that the corresponding tax was not paid by the suppliers, the Petitioner submitted reconciliation statements showing that the ITC reflected in the updated GSTR-2A was affected due to amendments made by the suppliers in their subsequent returns. The Petitioner also explained the difference of ₹3,76,539/- for the Financial Year 2020-21. The said claim has been verified by the concerned officers, who have submitted a compliance report in response to the objections raised by the officers of DG Audit (Central), IAAD, Ahmedabad, confirming that the differences were due to amendments made by the suppliers in their GSTR-1 returns after initial filing, which caused apparent mismatches but it did not indicate actual non-payment of tax.

11. That, the matter has now been taken up with the Director, Office of the Director General of Audit (Central), Indian Audit & Accounts Department, Ahmedabad, for resolution and closure of the aforesaid audit observations raised by the officers of DG Audit (Central), IAAD, Ahmedabad.

12. That, upon examination of the audit observations

raised by the office of the DG Audit (Central), the replies submitted by the petitioner, and other relevant records, it was found appropriate to take up the matter with the officer of the DG Audit (Central), Ahmedabad, for settlement and closure of the said observations."

13. Referring to the above averments, it was submitted that petitioner failed to produce the documents and proofs that the payment had been made by them towards the value of supply along with the tax payable thereon, copies of tax invoices or debit notes issued by the supplier or such other tax paying documents, documentary proofs regarding receipt of goods and services or both. Reliance was placed on the Circular No.183/15/2022-GST dated 27/12/2022 issued by the Central Board of Indirect Tax of Customs, New Delhi, more particularly clause-3(b), which provides that, 'where the supplier has failed to file Form GSTR-1 for a tax period but has filed the return in Form GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in Form GSTR-2A of the recipients-in such cases, the difference in ITC claimed by the registered person in his return in Form GSTR-3B and that available in Form GSTR-2A may be handled by following the procedure provided in para 4 below. Para-4 of the circular states as under:

“4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfilment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- (i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;*
- (ii) that he has received the goods or services or both;*
- (iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.*

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.”

14. It was therefore submitted that as there was a difference in Form GSTR-1 and GSTR-3B filed by the petitioner, the petitioner was suppose to give the details of the invoices on which ITC was availed. However, in the facts of the case, it was submitted that the petitioner has failed to provide such details, and therefore, respondent no.4 was justified in confirming the demand on the ground that the petitioner has wrongly availed the ITC of IGST as per the show cause notice.

It was submitted that after the rectification, the petitioner has submitted the details along with the rectification application which has not been considered by the respondents as there was no error apparent on face of record of the impugned order.

15. It was submitted that thereafter the respondent examined the case of the petitioner for the purpose of submitting compliance report in connection with "Draft Report on Subject Specific Compliance Audit on the Department's Oversight on GST Payment and Returns Filing (DoRF Phase-II) for the years 2018-2019 to 2020-2021," proposed for inclusion in the Compliance Audit Report of the Comptroller & Auditor General of India (Goods & Services Tax) for the year ended March, 2023. It was found that the ITC availed by the petitioner was admissible and correct and difference were due to amendments made by the supplier in GSTR-1 returns after initial filing which caused mismatch but did not indicate actual non-payment of tax. Therefore, it is submitted that no interference may be called for by this Court while exercising the extra ordinary jurisdiction in the impugned order passed by respondent no.4 as the same is

passed on the basis of the material made available by the petitioner during the course of adjudication proceedings.

16. In rejoinder, learned Senior Advocate Mr. Mihir Joshi submitted that the petitioner has submitted the entire details along with the replies filed during the course of adjudication proceedings and has also submitted that there was an inadvertent error of the petitioner mentioning the wrong GSTIN numbers which was rectified later on and was duly reflected in the subsequent Financial Years which was demonstrated before the adjudicating authority in the reply dated 25/08/2023 as well as the subsequent reply filed in response to the notice in Form-GSTR-DRC-01 dated 29/02/2024. It was further submitted that the respondents had entire record available with them and which was duly explained by the petitioner.

17. It was therefore submitted that now when the petitioner has approached this Court, the respondents authorities after examining, have come before this Court with an affidavit that there is no mismatch which was caused was apparent and did not indicate actual non-payment of tax. It was submitted that

circular relied upon by respondent in para-4 provides that; proper officer was duty bound to seek the details regarding the invoices on which ITC has been availed by the petitioner in his Form-GSTR3B but at no point of time the respondents have called for such details and the petitioner was therefore not at fault in not supplying the details which is alleged to have been not provided during the course of the adjudication proceedings.

18. Learned Senior Advocate Mr. Mihir Joshi has invited attention of the Court to the averments made in para-D.31 of the petition wherein it is stated by the petitioner that the petitioner was never called upon to produce any record/documents as prescribed under the said circular.

19. It was therefore submitted that the respondents authorities have passed the impugned orders without jurisdiction contrary to the facts and material available on record by making false allegations against the petitioner for not supplying the documents etc. and therefore is liable to be quashed and set aside.

20. Considering the submissions made by the learned advocates appearing for the respective parties, it appears that though in the case of the petitioner, there was a movement of the goods from the factory to the godowns and there was no actual sale of the goods as per the scheme of the GST Act, the tax is now levied on the supply of the goods i.e. movement of the goods from one place to another and accordingly the petitioner was required to obtain the GST number for its factory and different godowns situated at different locations in the country. Accordingly the petitioner obtained the GSTIN numbers in the State of Gujarat and from September, 2018 had obtained the GSTIN number for the warehouse situated at Surat. It appears that by mistake the petitioner referred to the GSTIN number which was obtained for the State of Gujarat was wrongly stated for the supplies received at warehouse/godown situated at Surat by mentioning earlier GSTIN No.24AAACG4464B5Z0 instead of GSTIN No.24AAACG4464B7ZY.

21. Therefore, such mistakes were rectified by the petitioner in the subsequent returns filed for the month of June- 2019, July 2019 on-wards which was duly reflected in the GSTR-9

return for the Financial Year 2019-2020. These facts were duly disclosed by the petitioner in the replies filed on 25/08/2023 and reiterated in the reply dated 29/02/2024. Thus, on the part of the petitioner, there was no excess ITC claimed and only because of the wrong mentioning of the GSTIN number in Form-GSTR-1, there was a mismatch between the Form-GSTR-3-1 and GSTR-3B which was duly rectified by the petitioner later on and the respondent therefore could not have passed the impugned order raising demand on the basis of the mismatch between the form GSTR-1 and GSTR-3B inspite of the rectification/reconciliation made by the petitioner later on.

22. This fact is further fortified by the affidavit-in-reply filed on behalf of respondents no.1 to 4 which clearly states that though there is an apparent mismatch but there is no actual non payment of the tax by the supplier of the petitioner i.e. the factory at Mumbai or godown at Delhi who has supplied the goods to the petitioner at Surat warehouse.

23. This fact is duly reflected in the compliance report made by the respondent to the office of Director General of Audit

(Central). It is interesting to note the contents of the report which is placed on record as under:

“5. Pursuant to the audit findings, a pre-show cause consultation (Form DRC-01A) was issued to the taxpayer on 23.01.2024 (PDF copy enclosed), followed by a formal Show Cause Notice (Form DRC-01) on 31.01.2024 (PDF copy enclosed). The taxpayer submitted a written defence on 29.02.2024 (PDF copy enclosed) and was granted a personal hearing on 11.03.2024 (PDF copy enclosed). After considering all submissions and available records, the adjudicating authority confirmed the demand vide Order-in-Original No. Surat/GST/CLS/03/2024-25 dated 25.04.2024 (PDF copy enclosed). Thereafter, the taxpayer filed a rectification application under Section 161 of the CGST Act, which was rejected on 04.07.2024, as no apparent error was found in the original order (PDF copy enclosed).

5.1 The taxpayer has preferred to file a Writ Petition (Special Civil Application No. 10441/2024) before the Hon'ble Gujarat High Court, challenging the adjudication order on multiple grounds, including alleged procedural lapses and erroneous interpretation of the provisions relating to Input Tax Credit.

6. The department has carefully examined the taxpayer's submissions, reconciliation statements and audit findings. The verification reports furnished by the Jurisdictional Assistant Commissioner and Range Superintendent confirm that the alleged mismatches in Input Tax Credit arose due to data processing discrepancies rather than any actual non-compliance or evasion of taxes. As the audit issues stand duly addressed and clarified, it is requested that the aforementioned audit observations (OBS No. 1021071 and OBS NO.1021444 may now be treated as settled and closed.”

24. On perusal of the above, it is clear that the same is contradictory or it appears that the respondents without careful examination of the submissions of the tax payer, reconciliation statement and audit findings have passed impugned order-in-original and cursorily rejected the rectification applications filed by the petitioner resulting into the raising of the huge demand on the petitioner for no fault on part of the petitioner.

25. In such circumstances, we are of the opinion that impugned order-in-original is liable to be quashed and set aside. Accordingly, impugned orders dated 25/04/2024 and 04/07/2024 passed by the respective respondents authorities are quashed and set aside.

26. However, we also propose to impose exemplary cost upon the respondents for passing of such order-in-original contrary to the submissions made by the petitioner and the reconciliation statements as well as without verification of the facts presented before the adjudication officer.

27. Therefore, we call upon the respondents no.2, 3 and 4 as

to show cause as to why exemplary cost commensurating to the demand raised for no fault on part of the petitioner should not be levied upon them.

28. Respondents no.2, 3 and 4 are therefore directed to file their response before the next date of hearing.

29. Stand over to 16/04/2025.



(BHARGAV D. KARIA, J)

(D.N.RAY,J)

ILA