

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 6437 of 2025****SAZID ALI KHAN**

Versus

**OFFICE OF PRINCIPAL COMMISSIONER, CENTRAL GST AND CENTRAL  
EXCISE COMMISSIONERATE, VADODARA-I & ORS.**

Appearance:

MR PAVAN S GODIAWALA(2936) for the Petitioner(s) No. 1

MR ABHISHEK D. JAIN, AGP for the Respondent(s) No. 3

MR NEEL P LAKHANI(10679) for the Respondent(s) No. 1,2

MR PRADIP D BHATE(1523) for the Respondent(s) No. 4

**CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

and

**HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 20/06/2025****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr.Pavan S. Godiawala for the petitioner, learned advocate Mr.Neel P. Lakhani for the respondent Nos.1 and 2 through video conference and learned Assistant Government Pleader Mr.Abhishek D. Jain for the respondent No.3.

2. By this petition under Article 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside the



Order-in-Original dated 24<sup>th</sup> January, 2025 passed by the respondent No.2-Joint Commissioner, Central GST, Vadodara-I.

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

3.1. The petitioner is a proprietor of M/s.KSEG India International and doing scrap business since two decades.

3.2. The petitioner was registered under the provisions of Central Sales Tax Act and the Value Added Tax Act and after coming into force of the Goods and Services Tax Act, the petitioner was registered under the provisions of the Central/State Goods and Services Tax Act, 2017 (for short 'the GST Act').

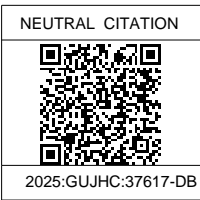
3.3. It is the case of the petitioner that the petitioner filed regular returns as



required under the provisions of the GST Act.

3.4. An information was received by the letter dated 04.10.2018 from the Joint Commissioner (Preventive), CGST, Ahmedabad South by the respondents to the effect that M/s.S.K.Enterprise, Ahmedabad is indulging in generating invoices and passing on GST credit to other Companies without any actual movement of goods and has passed on the GST credit to the M/s.KSEG India International, Vadodara.

3.5. On the basis of such information, a search operation was conducted at the premises of the petitioner on 11.01.2019 and relevant documents i.e. purchase invoices of M/s.S.K.Enterprise, Ledger Account etc. were seized under the Panchnama. Thereafter, further investigation was carried out against



M/s.H.M.Industries Private Limited, Kapadwanj on the same issue i.e. availment of credit on strength of input invoices without receipt of the goods from three bogus firms of Ahmedabad i.e. M/s.Shivay Enterprise, M/s.Avi Enterprise and M/s.Parshwnath Engineering. During the course of the search at the premises of M/s.KSEG, it was found that the petitioner also availed the credit on the strength of invoices issues by the said three firms.

3.6. After the investigation was carried out, the statement of the petitioner was recorded on 26<sup>th</sup> March, 2019 wherein, in answer to question No.11, the petitioner refused to peruse the printout of the vehicles verification report downloaded from the website <https://vahan.nic.in> by stating that such reports were not concerning him but



agreed with the 'Remarks Column' shown against 27 vehicles out of 119 vehicles as mentioned in the table and also accepted that heavy cargo like scraps cannot be transported in three wheeler tempo/three wheeler passenger vehicles, scooters, motorcycles, bus and tractor trailer etc.

3.7. The petitioner was also arrested on 30<sup>th</sup> March, 2019 by the respondent-Authorities and was released on bail after deposit of Rs.35 Lakhs as personal bail and after agreeing for some other conditions of the bail order.

3.8. It appears that the summons dated 14.08.2019 was also issued upon the petitioner to submit relevant documents i.e. Invoices of Suppliers, Lorry Receipts, Public Consignments



Notes and E-way Bills etc. for the period from July, 2017 to March, 2018 and 2018-19 in case of four firms as well as M/s.Aadarsh Trading and M/s.Vikas Trading. In response to such summons, the petitioner by letter dated 21.08.2019 submitted that the so called documents pertaining to the said period were not in his possession and the same were lost by the person from his Office namely Mr.Keshavkumar Sharma during the transit from Nehru Nagar, Ghaziabad to Hapudmod Bus-Station at Delhi and the same was reported to Sihani Gate Police Station, Delhi. Accordingly, the summons dated 16.09.2019 was issued to Mr.Keshavkumar Sharma to give statement but he did not produce himself before the respondent.

3.9. In the further statement of the petitioner recorded on 7<sup>th</sup> February, 2022, it



was stated that Mr.Keshavkumar Sharma has left his Company and all the documents for the years 2017-18 and 2018-19 except seized by the Department on 11.01.2019 had been lost in Ghaziabad by the said person.

3.10. The respondent No.2 thereafter extended the investigation towards verification of various vehicles used in the transactions between the petitioner firm and various other firms who were alleged to have provided the Invoices without supply of the goods and it was found during the investigation that no E-Way Bill during the period from May, 2018 to March, 2021 was available for the supply of the goods to M/s.KSEG by four firms i.e. M/s. M&M.Enterprise, M/s.Riteshkumar Arvindbhai Parekh, M/s.Fairwell Sales Private Limited and



M/s.Ajay Enterprise. During the investigation, it was further revealed that the fake/dubious ITC were passed on by M/s.KSEG in respect of fifteen firms and accordingly, a search was again conducted on 08.07.2021 at the premises of the petitioner at Vadodara by the Officers of the Preventive Section of the CGST&CE, Vadodara-I and purchase ledger of the fifteen units were seized. Thereafter, on further investigation, it was revealed that in case of one M/s.Laxmi Traders that it was a fictitious firm and has passed on ITC to the tune of Rs.24,82,956/- to M/s.KSEG-Proprietorship concern of the petitioner. Investigation was carried out in almost more than 24 firms and thereafter, the final statement of the petitioner was recorded again on 6<sup>th</sup> March, 2023 wherein, it was stated that he has availed Input Tax Credit on value mentioned in





GSTR-2A and did not place any written order for purchase of scrap and there is no outstanding payment in case of M/s.Fairwell Sales Private Limited and M/s.Shivay Tradelink and rest of the parties.

3.11. The respondent thereafter issued the intimation in Form GST-DRC-01A under Rule 142(1A) of the Central Goods and Services Tax Rules, 2017 (for short 'the Rules') on 17<sup>th</sup> March, 2023 but no reply of the same was received till the issuance of the show-cause notice on 31<sup>st</sup> March, 2023 upon the petitioner calling upon the petitioner to show-cause as to why:

*(i) An amount of Rs.14,52,31,254/- (Fourteen Crores Fifty Two Lakhs Thirty One Thousands Two Hundred Fifty Four only) (IGST-Rs. 3,15,59,115/-, CGST-Rs. 5,68,36,070/-, SGST-Rs.*



*5,68,36,070/-) availed as input tax credit fraudulently by them during from 24 suppliers as mentioned in Table -6 above during the period July-2017 to March 2022 should not be demanded under the provisions of Section 74(1) of the CGST Act, 2017 read with Section 74(1) of the GGST Act, 1994 and section 20 of IGST Act 2017;*

*(ii) Interest on wrongly availed fraudulent credit should not be demanded from them on the amount demanded above under Section 50 of the CGST Act, 2017 read with Section 50 of the GGST Act, 2017 and section 20 of IGST Act 2017;*

*(iii) Penalty in terms of Section 74(1) of the CGST Act, 2017 read with Section 74(1) of the GGST Act, 2017 and section 20 of IGST Act 2017 should not be imposed on them which is equal to amount demanded at SI. No (i) above;*

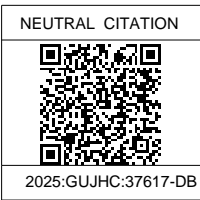


3.12. The show-cause notice was also issued to Mr.Vijay Jani on 31.03.2023 and Mr. Keshavkumar Sharma, Accountant of the petitioner.

3.13. It appears that the petitioner meanwhile, has preferred Special Civil Application No.18159 of 2019 before this Court with the following prayers :

*"4. In the light of the aforesaid facts and circumstances, the petitioner herein prays :*

*A. The Hon'ble Court would be pleased to issue writ of certiorari or such other appropriate writ quashing and setting aside the impugned order, summons at Annexure "I" and impugned summons and ongoing actions of the Respondents and issue writ of mandamus or such other appropriate writ directing the Respondents to refund the bond*



*amount;*

*B. The Hon'ble Court would be pleased to stay the impugned actions of the Respondents from further inquiry and actions of further issuance of the summons against the Petitioner, pending hearing and final disposal of the petition;*

*BB. The Hon'ble Court would be pleased to waive/modify/amend the conditions vide letter dated 15.10.2019 as imposed by the Deputy Commissioner, pending hearing and final disposal of the petition, in the overall interest of justice."*

3.14. This Court by order dated 06.05.2024 passed the following order :

*"Heard learned advocate Mr.Pavan S. Godiawala for the petitioner/applicant and learned advocate Mr.Utkarsh Sharma for the respondent No.4.*



**Order in Civil Application :**

*This application is filed for the amendment of the Special Civil Application by placing on record the show-cause notice dated 31<sup>st</sup> March, 2023 as well as relevant submissions and prayer to quash the notice. The same is allowed in terms of paragraph No.3A.*

*The application is accordingly disposed of.*

**Order in Special Civil Application :**

*1. Learned Mr.Pavan S. Godiawala for the petitioner has tendered the draft amendment. The same is allowed in terms of the draft. To be carried out forthwith.*

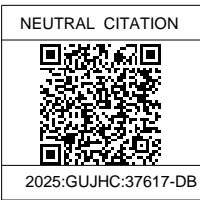
*2. Issue **Notice** upon newly added respondent No.2-A, returnable forthwith. Learned advocate Mr.Utkarsh Sharma waives service of notice for and on behalf of the newly added respondent*



No.2-A.

3.1. Learned advocate Mr.Pavan S. Godiawala submitted that the main grievance of the petitioner is that the the petitioner was harassed by the respondent-authority by calling him every Monday and asking him to sit from morning to evening without any further inquiry. It was further submitted that the entire inquiry and the show-cause notice issued by the respondent-authority is without any basis and jurisdiction and therefore, liable to be quashed and set aside. It was further submitted that the petitioner has not availed any benefit of Input Tax Credit as alleged in the impugned show-cause notice.

3.2. It was submitted that though the petitioner has tendered the reply under protest, the respondent-authorities have not proceeded further or passed any order after issuance of show-cause notice.



3.3. It was further submitted that the show-cause notice is issued without conducting any inquiry and after conducting proper inquiry the show-cause notice can be issued and therefore, the impugned show-cause notice is liable to be quashed and set aside.

4. On the other hand, learned advocate Mr.Utkarsh Sharma for the respondent-authorities submitted that this petition is filed on the basis of apprehension and only on the basis that the petitioner was harassed by the respondent-authorities. It was further submitted that the petitioner was never harassed and shall not be harassed at any point of time as the respondent-authorities are discharging their duties and if the petitioner is feeling that he is harassed, then the petitioner should co-operate with the respondent-authorities in putting an end to the entire adjudication process pursuant to the show-cause notice. It was therefore



*submitted that no interference be made in the impugned show-cause notice and the respondent-authorities undertakes to complete the entire adjudication process within three months from today with the co-operation of the petitioner.*

*5. Considering the above submissions and considering the manner in which the present petition is filed making grievance against the conduct of the respondent Officers in conducting the inquiry as well as issuing the impugned show-cause notice, without entering into merits of the matter and in view of the fact that the matter is pending since 2019 and the impugned show-cause notice is issued before one year on 31.03.2023, the petition is disposed of with the following directions.*

*(i) The petitioner shall co-operate in adjudication process of the show-cause notice,*

*(ii) The respondent-authorities*





*shall not cause any harassment to the petitioner and after giving opportunity of hearing to the petitioner including the opportunity to cross-examine, if the petitioner requests for cross-examination of any of the person who is referred to in the relied upon the documents, shall pass the order in Form GST DRC-07 disposing of the show-cause notice issued under Section 74 read with Section 70 and in accordance with the provisions of Section 75(4) of the Central Goods and Services Tax Act, 2017.*

*(iii) Such exercise shall be completed within a period of twelve weeks from the date of receipt of the copy of this order.*

*6. The petition is accordingly disposed of without expressing any opinion on merits, keeping all the contentions open to be raised by the petitioner during the adjudication process by the*



*respondent-authorities. Notice is discharged."*

3.15. Pursuant to the aforesaid order passed by this Court, the petitioner submitted an application on 04.10.2024 to cross-examine the following persons :

*"1.Mr.C.B.Mayavanshi, Superintendent (Prev), CGST, Vadadora;  
2.Mr.R.K Ojha, Superintendent (Prev), CGST, Vadadora;  
3.Mr.Rajeev Kumar Agarwal Superintendent (Prev), CGST, Vadadora;  
4.Mr.C A Chavda, Superintendent (Prev), CGST, Ahmedabad;  
5.Mr.Vijay Vajubhai Jani-Commission Agent-Bhavnagar statement Recorded by Supt Mr.C.B.Mayavanshi."*

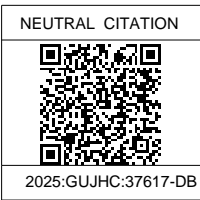
3.16. The respondent-Authority thereafter fixed the hearing on 14.10.2024. The petitioner submitted a reply on 14.10.2024 with a request to cross-examine the above



witnesses by issuing summons and requested for adjourning the matter to 21<sup>st</sup> or 22<sup>nd</sup> of October, 2024.

3.17. However, when the respondent-Authority has granted the opportunity to the petitioner on 26.12.2024, due to unavoidable circumstances as the Advocate of the petitioner was not in position to attend the hearing and thereafter the case was adjourned too, however, by letter dated 15.01.2025 also the adjournment was sought on account of indisposed health of the Advocate of the petitioner, but no one attended the hearing thereafter and the respondent-Authority has passed the impugned Order-in-Original on 24<sup>th</sup> January, 2025.

3.18. It also appears that the respondent No.2 issued the personal hearing letters dated



27.09.2024, 02.12.2024 and 31.12.2024 as well as summons dated 04.10.2024, 02.12.2024 and 31.12.2024 to Shri Vijaykumar Jani who is also a co-noticee but neither Mr.Vijay Kumar Jani nor the petitioner availed the opportunities provided for Cross-examination or hearing. However, being aggrieved and dis-satisfied, the petitioner has preferred this petition to quash and set aside the impugned Order-in-Original.

4.1. Learned advocate Mr.Pavan Godiawala appearing for the petitioner has submitted that the impugned order is passed without giving an opportunity of hearing to the petitioner or his Advocate and without affording any opportunity of cross-examination as prayed for by the petitioner on 04.10.2024. It was submitted that this petition is filed for a limited purpose so as to avail the



opportunity to cross-examine the witnesses which was proposed by the petitioner in the application dated 04.10.2024.

4.2. It was therefore submitted that the petitioner is not desirous to make any submission on merits but the matter may be remanded back to the respondent-Authority only for the purpose of granting an opportunity of hearing to the petitioner as the Advocate for the petitioner could not remain present on two occasions i.e. on 26.12.2024 and on 15.01.2025 which is reflected in the impugned order.

4.3. Learned advocate Mr.Paval Godiawala further submitted that the respondent-Authority never intimated the petitioner that the cross-examination, so far as the Officers of the Departments are concerned, could not be



granted though they are the persons who have issued the summons and also named in the relied upon documents and the petitioner was required to cross-examine the Officers of the Department so as to bring on record the way in which the inquiry was conducted by the Department.

4.4. It was further submitted that the petitioner has demonstrated in his reply dated 14.10.2024 as to how the persons who are named in the application dated 04.10.2024 are required to be cross-examined by the petitioner as they are referred to in the relied upon documents and the petitioner on the basis of the cross-examination was required to submit the written submissions and reply to the show-cause notice, however, without granting the opportunity of cross-



examination and to submit the final reply by the petitioner, the impugned Order-in-Original is passed in violation of the principles of natural justice.

4.5. It was further submitted that in the facts of the case, the matter may be remanded back to the respondent No.2 so as to pass a fresh, de-novo order after giving opportunity of cross-examining the persons who are referred to in the application dated 04.10.2024 and further providing an opportunity to submit the final reply to the show-cause notice and opportunity of hearing to the petitioner.

5.1. On the other hand, learned advocate Mr.Neel Lakhani for the respondent Nos.1 and 2 submitted that sufficient opportunity is



provided to the petitioner after the passing of the order by this Court in Special Civil Application No.18159 of 2019, however, the petitioner failed to avail such opportunity.

5.2. It was further submitted that the petitioner has an alternative remedy to challenge the impugned order by preferring an Appeal under Section 107 of the GST Act and this Court may not interfere at this stage while exercising the extra-ordinary jurisdiction under Article 227 of the Constitution of India considering the fact that the petitioner, despite of giving sufficient opportunity or hearing, has tried to delay the proceedings on the one pretext or other and therefore, it cannot be said that there is violation of principles of natural justice in the facts of the case.





6. Having heard the learned advocates for the respective parties and having considered the material placed on record and on perusal of the impugned Order-in-Original passed by the respondent No.2, we are of the opinion that the petitioner has an alternative efficacious remedy to challenge the impugned order by preferring an Appeal under Section 107 of the GST Act as held by the Hon'ble Apex Court in case of ***The Assistant Commissioner of State Tax and Others Versus M/s.Commercial Steel Limited*** as under :

*"11. The respondent had a 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.*

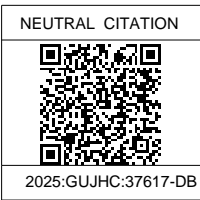
*12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of 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.*

*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."*

7. with regard to the contention raised on behalf of the petitioner that the petitioner has not been granted an opportunity of cross-examination of the persons who were named in the application dated 04.10.2024 is concerned, we are of the opinion that out of the five



persons, four belongs to the Department who have either issued the summons or arrest memo and therefore, such persons are not required to be cross-examined by the petitioner and therefore, the respondent No.2 has rightly not granted the cross-examination of such Departmental Officers to the petitioner. So far as the cross-examination of Shri Vijay Kumar Jani is concerned, the opportunity was given as stated in the impugned order as under but neither Mr.Vijay Kumar Jani nor the petitioner appeared for cross-examination :

*"25.4.1. The taxpayer sought the cross-examination of several individuals, namely Shri C.B.Mayanshi, Superintendent, Shri R.K.Ojha, Superintendent, Shri Rajeev Kumar Agarwal, Superintendent, all from CGST, Vadodara; Shri C.A.Chavada, Superintendent, CGST, Ahmedabad; and Shri Vijay Kumar Jani, a commission*



agent from Bhavnagar. However, the Hon'ble High Court, in paragraph 5 of its order dated 06.05.2024, specifically directed cross-examination only of individuals mentioned in the relied-upon documents. Accordingly, the only person qualifying under this criterion is Shri Vijay Vijubhai Jani, whose name appears in the relied-upon documents and who is also a noticee in the present SCN dated 31.03.2023. Multiple personal hearing letters dated 27.09.2024, 02.12.2024, and 31.12.2024, as well as summons issued on 04.10.2024, 02.12.2024, and 31.12.2024, were sent to Shri Vijay Kumar Jani. Despite these efforts and the ample time and opportunities provided, he did not appear for a personal hearing.

The other individuals mentioned by the taxpayer do not appear in the relied-upon documents, and no valid reason for their cross-examination has been provided. Therefore, the request for their cross-examination is not



*entertained.*

*25.4.2. I find that the taxpayer sought cross-examination, as validated by the Hon'ble High Court order dated 06.05.2024, of Shri Vijay Vijubhai Jani, who is a commission agent or mediator facilitating the availability of scrap between purchasers and sellers. The taxpayer was aware of his involvement in the case, as evidenced by the recorded statement of Shri Vijay Vijubhai Jani dated 15.02.2019. However, the taxpayer's request for cross-examination lacked substantive reasoning or justification. Despite the opportunity for cross-examination being provided to Shri Vijay Vijubhai Jani, neither the taxpayer nor Shri Jani appeared to proceed with it. Given these facts and circumstances, the claim for cross-examination is deemed invalid and baseless, rendering it untenable. In this regard, I rely on the decision of the Hon'ble High Court of Andhra Pradesh in the case of*



*Manidhari Stainless Wire Pvt, Ltd. - 2018 (360) E.L.T. 255 (A.P.), wherein it was held as follows:*

*Cross-examination - Right to cross-examine not absolute - If there are factual grounds to show that denial of cross-examination was based upon sound logic, then order of adjudication cannot be interfered with - Section 33A of Central Excise Act, 1944. [2013 (289) E.L.T. 3 (S.C.) relied on]. [para 28]- Petition dismissed."*

8. We are also fortified by our view as referred in the impugned order by the decision of the Hon'ble Apex Court in the case of **Telstar Travels Private Limited and Others Versus Enforcement Directorate** reported in **2013 (289) ELT Page 3 (SC)** wherein, it is held as under :

"28. Coming to the case at hand, the



*adjudicating authority has mainly relied upon the statements of the appellants and the documents seized in the course of the search of their premises. But, there is no dispute that apart from what was seized from the business premises of the appellants, the adjudicating authority also placed reliance upon the documents produced by Miss Anita Chotrani and Mr Raut. These documents were, it is admitted, disclosed to the appellants who were permitted to inspect the same. The production of the documents duly confronted to the appellants was in the nature of production in terms of Section 139 of the Evidence Act, where the witness producing the documents is not subjected to cross-examination. Such being the case, the refusal of the adjudicating authority to permit cross-examination of the witnesses producing the documents cannot even on the principles of the Evidence Act be found fault with. At any rate, the disclosure of the documents to the appellants and the opportunity given*





*to them to rebut and explain the same was a substantial compliance with the principles of natural justice. That being so, there was and could be no prejudice to the appellants nor was any demonstrated by the appellants before us or before the courts below. The third limb of the case of the appellants also in that view fails and is rejected."*

9. So far as the contention of the petitioner that no opportunity of hearing was granted to the petitioner and petitioner was also prevented from filing any written submission and reply to the show-cause notice is concerned, it would be open for the petitioner to make the submissions before the Appellate Authority as the appeal proceedings are nothing but a continuation of the original proceedings.

10. In view of the above, without expressing



any opinion on merits, the petition is dismissed with a liberty to the petitioner to file statutory Appeal as provided under Section 107 of the GST Act in accordance with law.

**(BHARGAV D. KARIA, J)**

**(PRANAV TRIVEDI,J)**

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