



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18068 of 2025

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA**

**and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Approved for Reporting	Yes	No
	✓	

NIKET BIPINBHAI PATEL THROUGH POWER OF ATTORNEY HOLDER
BIPINBHAI MADHAVBHAI PATEL

Versus

ASSISTANT COMMISSIONER (A.E.) CGST-CENTRAL EXCISE
VADODARA-II COMMISSIONERATE

Appearance:

MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1

DEEPAK N KHANCHANDANI(7781) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 10/02/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. **Rule** returnable forthwith. Mr. Deepak Khanchandani, learned advocate waives service of notice of rule on behalf of the respondent.

2. On 06.02.2026, following order was passed:

"It is noticed by us that the respondent has issued show cause notice under Section 74(1) of the Goods and Services Tax Act, 2017 (For Short "GST Act") dated 28.10.2025 is without jurisdiction and in fact the respondent authority has misinterpreted the provisions of Sections 17(5) (d) of the GST Act.

Learned Standing Counsel Mr. Deepak Khanchandani for the respondent requests for some time in order to take instructions.

List the matter on 10.02.2026. To be listed on top of the

Board.”

3. By this writ petition, the petitioner has assailed the show-cause notice dated 28.10.2025 under Section 74(1) of the Goods and Services Tax Act, 2017 (for short “GST Act”). Further prayer is made seeking direction to the respondent to unblock the Input Tax Credit (for short “ITC”) amounting to Rs.98,11,678/-.

4. The brief facts of the writ petition are as under:

4.1 Petitioner is an individual who has acquired leasehold rights over a Gujarat Industrial Development Corporation (GIDC), Ankleshwar plot from Syngenta India Limited and is engaged in the business of undertaking sub-plotting activities and subsequently transferring the leasehold rights of such sub-plots to various purchasers. Petitioner is a Non-Resident Indian (NRI) residing in the USA and has obtained GST registration being GSTIN 24BGDPP4059A1ZR w.e.f. 14.03.2022 solely for the purpose of discharging GST liability on the transfer of leasehold rights of GIDC sub-plots.

4.2 For transferring the leasehold rights of the sub-plots, the Petitioner is required to pay various charges to GIDC, such as sub-divisional charges, NU penalty, miscellaneous administrative charges, transfer fees and other statutory dues necessary for effecting the transfer. GIDC levies GST on these charges, and since such expenses are directly and intrinsically linked to the Petitioner's business activities, the Petitioner has duly availed the corresponding Input Tax Credit (ITC).

4.3 During F.Y. 2022-23, the Petitioner sold Plot Nos. 629/2



and 629/4 to M/s SML Limited. Against these transactions, the Petitioner received consideration of Rs. 20,00,00,000/- in July 2022 and Rs. 16,51,00,000/- in September 2022. Accordingly, the Petitioner discharged GST liability of Rs. 3.60 crores in July 2022 and Rs. 2.97 crores in September 2022. While discharging GST for July 2022, the Petitioner inadvertently availed and utilized ITC of Rs. 38,60,608/-, which was subsequently reversed through Form DRC-03 dated 11.04.2023.

4.4 It appears that the respondent department sought for certain information by alleging that the petitioner had filed NIL returns for Financial Year (F.Y) 2022-23 and F.Y. 2023-24 except for July, 2022 and September, 2022 and had availed ITC on invoices issued by GIDC, which was purportedly in the nature of blocked credit under Section 17(5)(d) of the GST Act. Accordingly, a spot visit was conducted at the registered premises of the petitioner on 01.11.2023 and during the course of visit, Mr. Bipin Patel, the authorised signatory of the petitioner, clarified that the petitioner had not undertaken any business activity other than the transfer of leasehold rights of GIDC sub-plots.

4.5 After summons were issued and statements were recorded, the respondent issued an intimation of liability under Section 74(1) of the GST Act in Form DRC-01A on 13.10.2025, calling upon the petitioner to pay Rs.98,11,678/- along with applicable interest and penalty by alleging that the petitioner had availed and utilized ITC in contravention of Section 17(5)(d) of the GST Act.



5. Learned advocate Mr.Hardik Vora appearing for the petitioner, at the outset, has submitted that the impugned notice is without jurisdiction as the petitioner's activities of selling the GIDC Plots would not attract the provision of Section 17(5)(d) of the GST Act. It is submitted that it is not the case of the respondent that the petitioner has committed any fraud or made any wilful mis-statement or any suppression of fact, which would attract the provision of Section 74(1) of the GST Act. Accordingly, the penal provisions are not attracted in the present case.

5.1 On the merits of the case, it is submitted that the allegation levelled by the petitioner of availing and utilising ITC is also baseless and devoid of merits. It is submitted that though the petitioner has indeed availed ITC on charge levied by GIDC, the credit thereof has never been utilised for payment of output GST and still continues to remain unutilised in the electronic credit ledger and the respondent has blocked the very same amount lying in the petitioner's electronic credit ledger on 22.09.2025, which clearly established that the credit was lying unutilised as on that date.

5.2 It is further submitted that two sub-plots in question were sold during the F.Y. 2022-23, well before the date on which the ITC was blocked, which would further confirm that the credit could not have been utilised for any output tax liability. It is submitted that the entire GST on the transfer of sub-plots has been discharged in cash and even the ITC of Rs. 38,60,608/- which was inadvertently utilised in July, 2022, was



duly reversed through Form DRC-03 dated 11.04.2023, which demonstrate that the petitioner had paid the entire output GST liability in cash.

5.3 Finally, it is submitted that even if it is assumed for the sake of argument without admitting that any portion of the ITC was irregularly availed, the same would, in any case, remain unutilised in the future since the petitioner's outward supplies are not taxable and there is no possibility of revenue loss, either actual or potential.

6. In response to the aforesaid submissions, Mr. Deepak Khanchandani, learned advocate for the respondent has submitted that since the petitioner has violated the provisions of Section 17(5)(d) of the Act and has wrongly availed the ITC and non-disclosure of the same would attract the provision of Section 74 of the GST Act.

6.1 It is contended that the argument regarding the admissibility of the ITC is misconceived, since the show cause notice dated 28.10.2025 was issued to call upon the explanation from the petitioner as to why the wrongly availed ITC should not be demanded and recovered, and the correctness or otherwise of the proposed view can only be examined during adjudication, and entertaining a writ petition at this stage would amount to pre-empting statutory proceedings, which is impermissible in law.

7. We have heard learned advocates for the respective parties at length. The respondent has not disputed that the



petitioner is having his business activities of acquiring the leasehold rights over the GIDC Plots from one Syngenta India Limited and further undertaking sub-plotting activities and subsequently transferring the leasehold rights of such sub-plots to various purchasers. The petitioner is a Non-Resident Indian (NRI) residing in the USA and has obtained GST Registration solely for the purpose of discharging GST liability on the transfer of leasehold rights of GIDC sub-plots.

8. The petitioner has been issued notice under Section 74(1) of the GST Act in Form DRC-01A on 13.10.2025 calling upon him to pay Rs.98,11,678/- along with applicable interest and penalty for alleging that he had availed and utilised ITC in contravention of Section 17(5)(d) of the GST Act.

9. At this stage, we may refer to the provision of Section 17(5)(d) of the GST Act, which is as under:

"Apportionment of credit and blocked credits.

17. (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

.....

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

....

*(d) goods or services or both received by a taxable person **for construction of an immovable property** (other than plant and machinery) on his own account including when such goods or services or both are used in the course or*

furtherance of business.

[Explanation 1.]- For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

Explanation 2.- For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery".

10. Thus, a plain and simple reading of provision of Section 17(5)(d) of the GST Act expositis that the apportionment of credit and blocked credit relates to the goods or services or both by a taxable person for the purpose of construction of any immovable property. Thus, the legislative intent is clear that the bar on credit applied exclusively to construction related expenditure and the apportionment of credit and blocked credits relating to such business. The respondent has not established that the petitioner has undertaken any construction activity whatsoever and apart from transferring the leasehold rights in GIDC Plot, is also accordingly, undertaking the construction activities. Thus, the provision of Section 17(5)(d) of the GST Act would not even remotely apply to the petitioner. Hence, the allegation of availing block credit by resorting to the provision of Section 17(5)(d) of the GST Act, is uncalled for and there is a complete non-application of mind on behalf of the respondent. With regard to the provision of Section 74 of the GST Act, under which the notice has been issued, we may reproduce the same, which reads as under:

"Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful-misstatement or suppression of facts-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

Explanation "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."

11. Thus, we do not find that in the instant case, there is any fraud or wilful mis-statement or any suppression of facts at the end of the petitioner in availing the ITC or the same is wrongly availed. On the contrary, it has not been denied by the respondent that, the petitioner had, though utilised the ITC of Rs. 38,60,608/- in the month of July, 2022 but accordingly he has reversed to Form DRC-03 dated 11.04.2023. Thus, the petitioner has paid the entire output of GST liability in cash. Hence, the question of resorting to Section 74 of the GST Act is also uncalled for. On both these counts, the action of the respondent is without jurisdiction and in fact the respondent authority has misinterpreted and misapplied the statutory provisions which calls for



interference of this Court and hence the petitioner cannot be relegated to further remedy of facing proceeding, which does not satisfy the statutory pre-requisite. Hence, the Writ petition succeeds. The impugned notice dated 28.10.2025 issued by the respondent under Section 74(1) of the GST Act is quashed and set-aside. The respondent is directed to unblock the ITC amounting to Rs.98,11,678/-, which has been lying in the electronic credit ledger of the petitioner. Necessary action shall be taken within a period of three weeks from the date of receipt of the order. Rule is made absolute with no order as to costs.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)

SAJ GEORGE/DB/05