

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6209 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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|------------------------|--|-----|----|
| Approved for Reporting | | Yes | No |
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KOMAL JAYESHBHAI HEMAVAT
Versus
STATE TAX OFFICER (4) & ANR.

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Appearance:
MR PUNIT B JUNEJA(3972) for the Petitioner(s) No. 1
MS. TANUSHREE SHRIMAL, ASSISTANT GOVERNMENT PLEADER/PP for
the Respondent(s) No. 1
MS HETVI H SANCHETI(5618) for the Respondent(s) No. 2
NOTICE SERVED BY DS for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 02/04/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. Heard learned advocate Mr. Punit Juneja for the petitioner and learned Assistant Government Pleader Ms. Tanushree Shrimal for the respondent No. 1 and learned advocate Ms. Hetvi Sancheti for respondent No.2.

2. **Rule,** returnable forthwith. Learned Assistant

Government Pleader Ms. Tanushree Shrimal waives service of notice of rule for and on behalf of the respondent No.1 and learned advocate Ms. Hetvi Sancheti for the respondent No.2.

3. Since the issue involved in the present writ petition is in narrow compass, the matter is taken up for final hearing and final disposal today.

4. On 22.04.2024, this Court passed the following order:

“1. Learned advocate Mr.Punit Juneja submitted that contrary to Section 75(4) of the Central Goods & Service Tax Act the impugned order dated 30th December, 2023 is passed without providing any opportunity of hearing to the petitioner and therefore, there is breach of principles of natural justice.”

5. The facts of the case are as under:

5.1 The petitioner is a registered tax payer under the provisions of the Gujarat Goods and Service Tax Act, 2017 (for short “the GST Act’). The premises of the petitioner was raided and the books of the accounts were seized. Subsequently, show-cause notice dated 21.09.2023 was issued in Form GST DRC 01. The petitioner filed reply to the show-cause notice on 21.11.2023. However, without giving opportunity of personal hearing, the respondent passed order

under Section 74 of the GST Act on 30.12.2023, which is impugned in the present writ petition.

6. Today, Ms. Shrimal, learned Assistant Government Pleader has submitted, on the basis of the affidavit-in-reply filed in present writ petition, that the answering respondent had issued the show-cause notice on 11.09.2023 and 21.09.2023. The petitioner has filed the reply in Form DRC-06 dated 21.11.2023 for the Financial Year 2018-19 and in Form DRC-06 filed by the petitioner, the petitioner has selected "NO" in the box for personal hearing. That is the reason the opportunity of personal hearing was not granted to the petitioner. However, it was categorically accepted by Ms. Shrimal, learned Assistant Government Pleader that three personal hearing are envisaged under the provisions of Section 75(4) of the GST Act, which were not provided to the petitioner. Therefore, the stand taken by the learned Assistant Government Pleader cannot be countenanced, inasmuch as, the option of no personal hearing taken by the petitioner, cannot override the effect of mandate given by the statutory provision in Section 75(4) of the GST Act.

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 Traylor 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 appears 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.

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.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI, J)