IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17756 of 2023

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

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Approved for Reporting	Yes	No

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NARODA ENVIRO PROJECTS LTD. & ANR.
Versus
UNION OF INDIA & ORS.

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Appearance:
UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2
MS HETVI H SANCHETI(5618) for the Respondent(s) No. 1,3,4,5
RULE SERVED for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 02/09/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present writ petition, the petitioners have prayed for quashing and setting aside the show-cause notice dated 05.09.2023 issued under section 74 of the Central Goods and Services Tax Act, 2017 read with section 74 of the Gujarat Goods and Services Tax Act, 2017 (for short “the GST Acts”).

BRIEF FACTS :

2. The petitioners preferred an application for registration under section 12AA of the Income Tax Act, 1961 (for short “the Act”) on 22.02.2006, which was rejected by the authorities.

Ultimately, the said action was subject matter of challenge before the Income Tax Appellate Tribunal, which remanded the matter for fresh consideration. Thereafter, the Director of Income Tax (Exemption), Ahmedabad granted registration to the petitioner No.1 under section 12AA of the Act w.e.f. 21.12.2005. Registration under section 25 of the Companies Act, 1956 was also granted.

3. It appears that an issue arose with regard to the status of the petitioner being questioned to the extent as to whether it carries its activities for charitable purposes defined under section 2(15) of the Act, which ultimately resulted into the proceedings before the Commissioner of Income Tax (Appeals), allowing the appeals in favor of the petitioner granting exemptions to the petitioner No.1, which were further subject matter of challenge before the Income Tax Appellate Tribunal (for short “the Tribunal”). The Tribunal rejected the appeals filed by the Department, which ultimately culminated into the tax appeals being Tax Appeal No.627 of 2015 and allied matters before this Court. By the judgment and order dated 29.07.2019, this Court held that the petitioner No.1 is engaged in charitable activity by way of preservation of environment. The issue thus, got concluded so far as the activities of the petitioners were concerned and no further

challenge has been made. Civil Appeal No.8839 of 2022 filed by the Commissioner of Income Tax (Exemptions) against the judgment and order of this Court dated 29.07.2019 was disposed of on 30.01.2025 by the Apex Court in view of low tax effect.

4. After the introduction of the Goods and Services Tax (GST) regime w.e.f. 01.07.2017, the petitioners were under an impression that since the entity was duly registered under section 12AA of the Act and was engaged in undertaking the charitable activities, it claimed exemptions under the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 and did not pay the GST. As the petitioners were claiming exemptions, they were not entitled to claim Input Tax Credit under the GST Acts, which resulted into incurring losses. Thereafter, the petitioners obtained registration under the GST Acts and started paying Output Tax rather claiming exemptions, as they would be entitled for Input Tax Credit. From 13.05.2022, after obtaining registration under the GST, they stopped claiming exemption under the entry relating to the charitable activities.

5. It appears that on 23.11.2022, a search was conducted at the premises of the petitioner No.1, and it was alleged that the petitioners had erroneously not paid tax for the period prior to

13.05.2022. The petitioners accordingly, started paying tax w.e.f. 13.05.2022 since the claim for exemption was leading to losses. However, the respondent authority issued notice in Form GST DRC-01A on 21.06.2023 proposing to demand tax with interest and penalty under the GST Act for the period from 01.07.2017 to 12.05.2022. The petitioners responded and objected the proposed demand by filing its objection on 27.06.2023. The petitioners also pointed out the judgment of this Court rendered in the aforesaid tax appeals and requested to drop the demand. However, on 05.09.2023, the respondent No.3 proceeded to issue the impugned show-cause notice-cum-demand notice under section 74 of the GST Act. The petitioners have assailed this notice before this Court.

SUBMISSIONS ON BEHALF OF THE PETITIONERS :

6. Learned submissions of learned advocate Mr.Sheth appearing for the petitioners at the outset, has submitted that the impugned show-cause notice is required to be quashed and set aside in view of the judgment dated 29.07.2019 passed by this Court in Tax Appeal No.627 of 2015 and allied matters, wherein the Court, after detailed examination, has held that the activities of the petitioners fall within the expression "preservation of environment" by providing "pollution control treatment for

disposal of liquid and solid industrial waste", and it is also registered under the provision of section 12AA of the Act. It is submitted that the respondents have entirely ignored the judgment of this Court, though it was pointed out by the petitioners in their representation.

7. It is submitted by learned advocate Mr.Sheth that the Notification No.12/2017 dated 28.06.2017 does not stipulate any rate of GST under Chapter 99 relating to the services by an entity registered under section 12AA of the Act, which undertake charitable activities as defined under the provision of clause(iv) of Notification No.12/2017 dated 28.06.2017. It is submitted that petitioner No.2 has only given honorary service to the petitioner No.1, which itself is not a profit company, and the provision of section 74 of the GST Act does not get attracted in the case of the petitioners, as petitioner No.2 did not have any *mala fide* intention of deviation, and hence the proposal for imposition of personal penalty on him is therefore, wholly without jurisdiction.

8. Learned advocate Mr.Sheth has further Submitted that there was no question of intent of fraud, wilful suppression, misstatement of facts and hence, the ingredients of section 74 of the GST Act would not get attracted in the case of

the petitioners. He has submitted that the petitioners have acted *bona fidely* as per the notification dated 28.06.2017. Thus, it is urged that the impugned show-cause notice may be quashed and set aside.

SUBMISSIONS OF THE RESPONDENTS

9. Opposing the present writ petition and foregoing submissions, learned Senior Standing Counsel Ms.Sancheti has submitted that the petitioners cannot be extended the benefit of the judgment of this Court dated 29.07.2019 rendered in the aforesaid tax appeals since the same deals with the provisions of the Act, whereas the provisions of GST Acts operate in different realm. It is contended that the findings recorded by this Court in the judgment dated 29.07.2019 will not apply to the GST exemption scheme. In support of her submissions, she has referred to the Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 and the Chapter heading 9994 mentioning "sewage and waste collection treatment and disposal and other environmental protection services" which specifies levy of 9% GST on such services. It is submitted that the Entry No.1 of Notification No.12/2017 dated 28.06.2017, on which the reliance is placed, will not apply in case of the petitioners since the provision of clause 2(r)(4) of the Notification No.12/2017 though includes "preservation of environment" in

head of charitable activity however, the same cannot be read to cover a commercial fee-based affluent treatment services rendered by any industrial units of Naroda GIDC in discharging of those units own statutory pollution control obligations for a specified consideration invoiced under a distinct taxable classification.

10. It is submitted by learned Senior Standing Counsel that the petitioners did not file GST return for nearly 5 years despite being registered w.e.f. 01.07.2017 and cancelled the registration *suo moto* and continued to render admittedly taxable service worth Rs.79,53,00,000/-, without discharging any GST. It is submitted that the onus lies on the petitioners to disclose tax liability, failing which the invocation of provision of section 74 of the GST Act is legally sustainable. Thus, it is urged that the present petition may not be entertained.

ANALYSIS AND OBSERVATIONS

11. We have heard the learned advocates appearing for the respective parties and also perused the documents, as pointed out by them.

12. The facts which are established from the records and pleadings are as under:

(a) The petitioner No.1 is registered under the provision of section 12AA of the Act.

(b) The issue with regard to its charitable activities was deliberated upon by this Court in the Tax Appeal No.627 of 2015 and allied matters filed by the Commissioner of Income Tax. Issue No.1, which is incorporated in paragraph No.18 therein dismissing the appeals filed by the Revenue is as under:

> *"[1]Whether on the facts and in the circumstances, the Income Tax Appellate Tribunal was justified in affirming the view of the Commissioner (Appeals) that the activities of the assessee fall within the ambit of Preservation of Environment as envisaged under section 2(15) of the Income Tax Act, 1961?"*

(c) After threadbare examination of the order passed by the Income Tax Appellate Tribunal, Ahmedabad dated 29.01.2015 and the activities undertaken by the petitioners, the Coordinate Bench in the judgement and order dated 29.07.2019 passed in Tax Appeal No.627 of 2015 and allied matters has held thus:

> *"50. The ratio discernible from the aforesaid decision is that once the procedure is completed as provided under sub-section (1) of Section 12AA of the Act and a certificate is issued granting registration to the trust or institution, it is apparent that the same is a document evidencing satisfaction about (I) the genuineness of the activities of the trust or institution and (ii) about the objects of the trust or institution. While framing the assessment order, it is not open to the Assessing Officer to ignore the certificate of registration granted under Section*

12AA of the Act by the Director of Income Tax (Exemption). It is not permissible for the Assessing Officer to go behind the registration obtained by the assessee under Section 12AA of the Act.

51. The legislature has consciously used the word "preservation". Preserve means, to keep something in its original form or keep it in good condition. To put it in other words, to preserve is like keeping things the way they are. The only question is whether preservation would include protection?. To protect means, to keep away from harm or danger. As noted above, to preserve is like keeping things the way they are, same as protect, but this one is more like you are keeping it safe from a potential threat. One simple example of preservation could be "the fossil was perfectly preserve for hundreds of years". If the trade effluent or the liquid or solid, waste generated by the polluting industries is treated in a central treatment effluent plant, the same could be said to be in the direction of protecting the environment. Would this be synonymous to "preservation of environment". Section 2(15) for the purpose of preservation of environment has included watersheds, forests and wildlife, and at the same time, it also talks about preservation of monuments or places or objects of artistic and historic interest. One thing is for sure that while preserving anything, indirectly or directly, that thing is also protected.

xxx xxx xxx

94. The CIT (A) and the Income Tax Appellate Tribunal have concurrently held that taking an overall view, the dominant objects of the assessee are charitable as the dominant object is not only preservation of environment, but one of general public utility and, therefore, the assessee is entitled to seek exemption under Section 11 of the Act. The Tribunal is the last fact finding body. As a principle, this Court should not disturb the findings of fact in an appeal under Section 260A of the Act unless the findings of fact are perverse."

(d) Thus, the issue with regard to the activities undertaken by the petitioners relating to charitable activities was answered by the this Court in favor of the petitioners and it was held that the petitioner entity is entitled to seek exemption under section 11 of the Act.

(e) As recorded previously, the civil appeals were disposed of in view of low tax effect by the Apex Court vide order dated 30.01.2025.

13. Reading the observations of this Court in *juxtaposition* to the Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 will clarify that the activities of the petitioners would fall within the clause 2(r)(iv), under chapter 99. The relevant extract of the said Notification reads as under:

"Notification No. 12/2017- Central Tax (Rate)

New Delhi, the 28th June, 2017

> *G.S.R......(E). In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the intra-State supply of services of description as specified in column (3) of the Table below from so much of the central tax leviable thereon under sub-section (1) of section 9 of the said Act, as is in excess of the said tax calculated at the rate as specified in the corresponding entry in column (4) of the said Table, unless specified otherwise, subject to the relevant conditions as specified in the*

corresponding entry in column (5) of the said Table, namely:-

Table

SI. No	**Chapter, Section, Heading, Group or Service Code (Tariff)**	**Description of Services**	**Rate (per cent.)**	**Condition**
(1)	**(2)**	**(3)**	**(4)**	**(5)**
1	Chapter 99	Services by an entity registered under Nil section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.	Nil	Nil

(r) "charitable activities" means activities relating to- … … …
(iv) preservation of environment including watershed, forests and wildlife;"

14. Thus, the rate prescribed under the Notification No.12/2017 dated 28.06.2017 for the entities registered on section 12AA of the Act, which carry out charitable activities and are found under chapter 99 and the activities which mentioned in clause 2(r)(iv) relating to preservation of environment including watershed, forest, and wildlife is "Nil".

15. The respondents have placed reliance on Notification No.11/2017-Central Tax (Rate) dated 28.06.2017. This notification is issued though on the same date, is numbered as Notification No.11, which is prior to Notification No.12, as mentioned in and above. The respondents have placed reliance on the Entry No.32 specifying

Heading 9994 under Chapter 99 and section 9 of the Notification No.11/2017-Central Tax (Rate), which reads as under:

Sr. No	Chapter, Section or Heading	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
32	Heading 9994	Sewage and waste collection, treatment and disposal and other environmental protection services	9	Nil

16. By resorting to this Chapter Heading 9994, the respondents have issued the show-cause notice under the provision of section 74 of the GST Act dated 05.09.2023 in Form GST DRC-01 alleging that the petitioners though were aware of the facts of their services for treatment and disposal of the affluent as taxable under the GST Acts, did not pay tax deliberately which is in contravention of the provisions of the GST Acts by resorting to mis-declaration and willful suppression of facts with a deliberate intent to evade payment of GST, which is a taxable services falling under SAC 9994, as mentioned hereinabove and such acts of omission and commission constitute an offense of the nature and type as defined under section 132(1)(e) and (i) of the CGST Act and hence, are liable to be proceeded further under the provisions of section 74 of the GST Acts.

17. We may at the outset, now deal with the invocation of the provision of section 74 of the GST Act upon the petitioners. The provision of section 74(1) of the GST Act are relevant for declaring the validity of the impugned show-cause notice. The same reads as under:

> "***Section 74. Determination of tax***
>
> *(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."*

18. A reading of the aforenoted provisions manifests that for invocation of section 74 of the Act requires a strict showing of *malafide* intent, such as fraud, wilful misstatement, or suppression. It is the specific case of the petitioners, that they were not liable to pay GST in view of the decision in Tax appeals and its registration under section 12AA of the Act. The Supreme Court in the case of *M/s.Uniworth Textiles Limited vs. Commissioner Of Central Excise, Raipur*, 2013(9) SCC 753, while examining

the similar expressions of “wilfull misstatement or suppression of facts found in section 28 of the Customs Act, 1962 has held thus:

> *“15 In Anand Nishikawa Co. Ltd. V/s. Commissioner of Central Excise, Meerut, (2005) 7 SCC 749, while again referring to the observations made in Pushpam Pharmaceuticals Company (supra), this Court clarified the requirements of the proviso to Section 11- A, as follows:-*
>
> > *"26...This Court in the case of Pushpam Pharmaceuticals Company V/s. Collector of Central Excise, Bombay (supra), while dealing with the meaning of the expression "suppression of facts" in proviso to Section 11A of the Act held that the term must be construed strictly, it does not mean any omission and the act must be deliberate and willful to evade payment of duty. The Court, further, held :-*
> >
> > *'In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.'*
> >
> > *27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. V/s. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there*

was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11A of the Act".

16 In Collector of Central Excise V/s. H.M.M. Ltd., 1995 Supp(3)SCC 322, this Court held that mere non-disclosure of certain items assessable to duty does not tantamount to the mala fides elucidated in the proviso to Section 11A(1) of the Central Excise Act, 1944. It enunciated the principle in the following way: -

"2.The mere non-declaration of the waste/by-product in their classification list cannot establish any wilful withholding of vital information for the purpose of evasion of excise duty due on the said product. There could be, counsel contended, bonafide belief on the part of the assessee that the said waste or by-product did not attract excise duty and hence it may not have been included in their classification list. But that per se cannot go to prove that there was the intention to evade payment of duty or that the assessee was guilty of fraud, collusion, misconduct or suppression to attract the proviso to Section 11A(1) of the Act. There is considerable force in this contention.

Therefore, if non- disclosure of certain items assessable to duty does not invite the wrath of the proviso, we fail to understand how the non-payment of duty on disclosed items, after inquiry from the concerned department meets, with that fate."

19. Thus, it is held by the Apex Court that "When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression," and it may come to the aid of the petitioners. It further held that mere failure to

declare does not amount to wilful suppression. Albeit, Explanation 2 to section 74 defines 'suppression'; its ingredients will only get satisfied by some positive act of the assessee which establishes wilful suppression by withholding vital information for evading tax. We do not find that there was any intention to evade payment of tax or that the assessee was guilty of fraud, collusion, misconduct or suppression of facts.

20. From the facts of the present case, we do not find any malice intent or any deliberate intention of the petitioners to evade tax or suppression of facts to evade tax or fraud or willful misstatement made in order to evade tax in light of the judgment and order passed by judgment of this Court in Tax Appeal No.627 of 2015 and allied matters read with the provisions of Notification No.12/2017 dated 28.06.2017. The petitioners had stopped claiming exemption and have started paying tax since the exemption was resulting in low tax liability as a result of dis-allowance of Input Tax Credit. The same does not in any manner, can be construed that they have willfully and deliberately, in order to avoid the liability of tax, done so and such action would not mean that the exemption is not available to the petitioners for the past period

in light of the decision of this Court rendered in the aforesaid tax appeals. This Court, while examining the activities of the petitioners, has categorically held that they are engaged in the charitable activity by way of preservation of environment for the purposes of the provision of section 12AA of the Act. The GST regime also refers to the provision of the Act i.e. the one which is referred in the Notification No.12/2017 and prescribed and granting exemption from payment of GST to the entities which are registered under section 12AA of the Act which carry on the charitable activities. Thus, the respondents cannot ignore the decision of this Court, which is rendered in the context of their activities and the petitioners are registered under the provision of section 12AA of the Act.

21. The Notification No.12/2017 dated 28.06.2017, which is issued after Notification No.11/2017 deals with Chapter 99 and the entities which are registered under section 12AA of the Act, which undertake the charitable activities. The provisions of Notification No.11 of 2017 and the Chapter Heading 9994 prescribing levy of the GST at the rate of 9% cannot be imposed upon the petitioners since the same would be applicable to the private entities, which carry out the services as mentioned in Chapter 99.

22. Thus, in our considered opinion, the impugned show-cause notice, which has been issued in ignorance of the decision of this Court rendered in the aforesaid tax appeals laying quietus to the activities carried out by the petitioners, which is registered under section 12AA of the Act cannot be sustained.

23. In light of the foregoing observations, the writ petition succeeds. The impugned show-cause notice dated 05.09.2023 is hereby quashed and set aside. Rule made absolute.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(VAIBHAVI D. NANAVATI,J)

NVMEWADA/S-53