IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6623 of 2026

FOR APPROVAL AND SIGNATURE:

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

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Approved for Reporting	Yes	No
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M/S.KOR CHEMS THROUGH PARTNER SANJAY RAMESHCHANDRA SONI
Versus
ASSISTANT COMMISSIONER, CGST AND CENTRAL EXCISE & ANR.

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Appearance:
MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1
DEEPAK N KHANCHANDANI(7781) for the Respondent(s) No. 1,2

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

Date : 03/09/2026
ORAL JUDGMENT
(PER : HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI)

1. ***Rule*** returnable forthwith. Learned Senior Standing Counsel, Mr. Deepak N. Khanchandani waives service of notice of rule for and on behalf of the respondents.

2. By way of present petition, the petitioner herein has prayed for the following reliefs:

> *"5. The Petitioner accordingly prays that this Hon'ble Court may kindly be pleased to issue:*
>
> *a. A writ of certiorari, or any other appropriate writ, order and/or directions in the nature of certiorari to quash the order-in-original no. Div. VIII/AC-KDC/07/OA-GST/2025-26 dated 12.06.2025 (Annexure A1) along with summary order in Form DRC-07 bearing reference no.*

ZD240725000580T dated 01.07.2025 (Annexure A2) passed for the F.Y. 2021-22 as well as subsequent rectification order bearing reference no. ZD240725005705I dated 02.07.2025 (Annexure A3);

b. A writ of certiorari, or any other appropriate writ, order and/or directions in the nature of certiorari to quash the Order-in-Appeal no. VAD-CGST-002-APP-JC-939-2025-26 dated 27.02.2026 (Annexure B1) along with Form GST APL-04 bearing order no. ZD240326010836K dated 05.03.2026 (Annexure B2)

c. A writ of mandamus, or any other appropriate writ, order and/or directions in the nature of mandamus directing the Respondent to refund the tax of Rs. 29,25,000/- paid through DRC-03 dated 21.01.2023 and interest of Rs. 4,44,280/- paid through DRC-03 dated 22.12.2023.;

d. Pending the admission, hearing and final disposal of this petition, stay the order-in-original dated 12.06.2025 (Annexure A1) and order-in-appeal dated 27.02.2026 (Annexure B1) and/or restrain the respondents to continue and/or initiate the recovery proceedings pursuant to the impugned orders;

e. Pass any other order(s) as this Hon'ble Court may deem fit and more appropriate in order to grant interim relief to the Petitioner;

f. Any other and further relief deemed just and proper be granted in the interest of justice."

3. The petitioner being a partnership firm, is engaged in the trading of industrial chemicals such as Hydrogen Peroxide, Caustic Flakes and Phosphoric Acid, falling under HN Code 28061000, 29031200 and 28151110 respectively. The petitioner acquired leasehold rights in an industrial plot at Ankleshwar from M/s. Myspace Infracon [GSTIN: 24ABDFM5324K1ZB] for a total consideration of Rs.1,91,75,000/-, inclusive of GST of Rs.29,25,000/- (CGST of Rs.14,62,500/- and SGST of Rs. 14,62,500/-) in February, 2022. The supplier duly raised a tax invoice No.CS/7/21-22, dated 17.02.2022, charging Goods and Services Tax (for short 'GST') on such transactions.

3.1 The petitioner under a bonafide belief that the GST paid on such services was admissible Input Tax Credit (for short

‘ITC’), it availed the same while filling GST-3B for February 2022. The ITC properly reflected in the books of accounts and reported in the GST returns. On 16.01.2023, inspection under section 67(1) of the Central Goods and Services Tax Act, 2017 (for short ‘CGST Act’) was conducted during which, the statement of partner of the petitioner firm, Shri Rameshchandra, was recorded wherein, he admitted that the ITC had been availed on GST paid towards leasehold rights. He further clarified that the credit was taken under a bonafide belief, without knowledge that such ITC might be blocked under section 17(5)(d) of the CGST Act.

3.2 Subsequently, the Department recorded the statement of another partner of the petitioner firm, Shri Sanjay Soni, who confirmed that the ITC of Rs.29,25,000/- was duly reflected in the GST returns and books of account. He stated that the credit had been duly availed under a bonafide belief and after due discussion and consultation with the Chartered Accountant, without waiting for initiation of any further proceedings, the petitioner voluntarily reversed the entire ITC of Rs.29,25,000/- vide DRC-03 (Debit E.No.DC2401230416348/DI2401230611178) dated 21.01.2023 and also discharged the applicable interest of Rs. 4,44,280/- vide DRC-03 (Debit E.No.2412230320082) dated 22.12.2023 to avoid further litigation.

3.3 Thereafter, an intimation of tax ascertained as payable was issued in Form GST DRC-01A bearing DIN20240365VB0000D4A9, dated 05.03.2024, calling upon the petitioner to make payment of penalty. The petitioner submitted a reply on 13.03.2024 contending that the tax along with applicable interest had already been paid under protest through Form DRC-03 during the course of investigation. It was further submitted that all requisite information and documents had been duly furnished during the investigation proceedings, and that, there was neither any wilful misstatement nor suppression of facts, nor any fraudulent intent to evade tax. It was contended that no penalty was leviable in the facts and circumstances of the case. However, without considering the same, Show Cause Notice bearing DIN20240565VB000000060, dated 31.03.2024, was issued by the Deputy Commissioner (Prev.), CGST & Central Excise, Vadodara-II Commissionerate, proposing disallowance and recovery of ITC amounting to Rs.29,25,000/-, along with applicable interest and penalty under Section 74(1) of the CGST Act on the allegation that the said ITC constituted blocked credit under Section 17(5)(d) of the CGST Act.

3.4 In response thereto, the petitioner filed a detailed submission contending that the ITC had been availed under a bona fide belief regarding its admissibility, particularly since GST had been duly charged by the supplier and the transaction was transparently disclosed in Form GSTR-3B as well as duly reflected in Form GSTR-2A. It was further emphasized that there was neither any fraud nor suppression of facts, nor any willful misstatement in availing such credit. ITC had been voluntarily reversed, and interest amounting to Rs.34,44,280/- had been duly paid prior to the issuance of the Show Cause Notice. Reliance was placed on judicial precedents, including

Uniworth International Limited Vs. Commissioner Of Central Excise, Nagpur, wherein it has been held that mere non payment or incorrect availment of credit does not amount to suppression of facts with intent to evade duty.

3.5 The respondent No.1, without considering the submissions of the petitioner, proceeded to pass Order-in-Original No. DIV. VIII/AC-KDC/07/OA-GST/2025-26 dated 12.06.2025, along with the summary order in Form DRC-07 dated 01.07.2025 and determined a demand of ITC amounting to Rs.29,25,000/-, along with interest of Rs.4,44,280/- and penalty under section 74(1) of the CGST Act amounting to Rs.29,25,000/-. However, the respondent allowed appropriation of the tax and interest already paid by the petitioner through Form DRC-03 against the aforesaid demand.

3.6 Being aggrieved by the aforesaid order, the petitioner preferred an appeal before respondent No.2 on 10.09.2025 wherein, during the course of appellate proceedings, the petitioner filed a detailed written submission on 23.12.2025.

3.7 The respondent No.2, thereafter passed Order-in-Appeal no. VAD-CGST-002-APP-JC-939-2025-26 dated 27.02.2026 along with Form GST APL-04 bearing order no. ZD240326010836K dated 05.03.2026 confirming the demand. The aforesaid has given rise to the filing of the present petition for the reliefs, as referred to herein above.

4. Learned advocate, Mr. Hardik V. Vora appearing for the petitioner, at the outset, submitted that the decision of this

Court rendered in ***Special Civil Application No.18068 of 2025***, dated 10.02.2026 squarely applies to the facts of the present case. It is submitted that Section 17(5)(d) of the CGST Act provides that ITC is restricted only where the goods or services are received for the purpose of construction of an immovable property. The bar on credit applies exclusively to construction related expenditure. In the present case, the petitioner herein has not undertaken any construction activity. The petitioner has merely acquired the leasehold rights in the GIDC plots as it is. Accordingly, in absence of any construction of immovable property, the provision of section 17(5)(d) of the CGST Act is erroneously invoked in the case of the petitioner.

4.1 Learned advocate, Mr. Hardik V. Vora also submitted that the core issue is pertaining to ITC availed by the petitioner on acquisition of leasehold rights of GIDC plot. The respondents have failed to appreciate that the very foundation of the impugned proceedings is contrary to the settled legal position as held in *Gujarat Chamber of Commerce and Industry & Ors. (Supra)*, wherein, it is held that the provisions of section 7(1)(a) of the CGST Act providing for supply read with clause 5(b) of Schedule II and clause 5(c) of Schedule III would not be applicable to such transaction of assignment of leasehold rights of land and building and the same would not be subject to levy of GST as provided under section 9 of the CGST Act. In the facts of the present case, admittedly, the appellant acquired leasehold rights in an industrial plot allotted by the GIDC from M/S. MYSPACE INFRACON. It is submitted that at the time of the transaction, the supplier charged GST on consideration under a mistaken interpretation of law, treating the assignment of leasehold rights as a taxable property. The petitioner being a bonafide recipient, paid the GST amount to the supplier as a part of contractual consideration and availed corresponding ITC in its returns, since the tax was charged through a valid tax invoice and duly reflected in GSTR-2A. Subsequently, during the departmental proceedings, the petitioner reversed the ITC along with applicable interest through DRC-03 under protest to demonstrate bonafide compliance. It is submitted that the petitioner has effectively borne the entire incidence of tax on a transaction which has now been judicially declared as non-taxable.

4.2 It is further submitted that once by way of judicial dictum, it is held that assignment/transfer of leasehold rights in allotted land by GIDC is not exigible to GST, the GST charged by the supplier and paid by the petitioner was tax paid without authority of law. When the charging provision itself does not apply, any amount collected or retained by the department, whether directly as tax or indirectly by way of ITC reversal and interest, has no legal sanctity. It is submitted that the petitioner filed a detailed submission contending that the ITC availed under a bonafide belief regarding its admissibility, particularly since GST has been duly charged by the supplied and the transaction was transparently disclosed in Form GSTR-3B as well as duly reflected in Form GSTR-2A, the question of fraud or suppression or willful misstatement in availing such credit does not arise. Placing reliance on the aforesaid submissions, it is submitted that the impugned order-in-original along with the summary order and the order passed by the Appellate Authority, are required to be quashed and set aside.

5. Learned Senior Standing Counsel, Mr. Deepak N. Khanchandani appearing for the respondents relied on the affidavit-in-reply filed by the respondent authority and submitted that the petitioner herein under a bonafide belief that the GST paid on the services was admissible for ITC, availed the same by filing GST-3B for February, 2022. The ITC was properly reflected in the books of accounts and reported in the GST returns. It is submitted that during inquiry under Section 67(1) of the CGST Act, statement of Shri Rameshchandra – partner of the Firm, was recorded on 16.01.2026 under section 70 of the CGST Act wherein, he admitted that ITC was availed on GST paid towards leasehold rights and also conveyed that they were ready to reverse the ITC along with applicable interest through Form DRC-03 in order to ensure full compliance of law. Accordingly, without waiting for initiation of any proceeding, the petitioner voluntarily reversed the entire ITC to the tune of Rs.29,25,000/- vide Form DRC-03 on 21.01.2023 and also discharged the applicable interest to the tune of Rs.4,44,280/- vide Form DRC-03, dated 22.12.2023. In view of the aforesaid, the revenue issued show cause notice proposing disallowance and recovery of ITC of Rs.29,25,000/- along with interest and penalty under section 74(1) of the CGST Act. It is submitted that the department alleged that ITC was inadmissible and it pertains to blocked credit under section 17(5)(d) of the CGST

Act and further claimed that the petitioner had suppressed material facts with intent to evade the payment of tax which resulted into consequential orders passed by the revenue. However, Mr. Khandachandani, learned advocate is not in a position to controvert the fact that the issue involved in the present petition is squarely covered by the decision rendered in the case of *Gujarat Chamber of Commerce and Industry & Ors.(Supra),* and in *Special Civil Application No.18068 of 2025*.

6. We have heard the learned advocates appearing for the respective parties at length. It is not in dispute that the petitioner herein acquired leasehold rights in an industrial plot at Ankleshwar from M/s. Myspace Infracon [GSTIN: 24ABDFM5324K1ZB] for a total consideration of Rs.1,91,75,000/-, inclusive of GST of Rs.29,25,000/- (CGST of Rs.14,62,500/- and SGST of Rs. 14,62,500/-) in February, 2022. The supplier duly raised a tax invoice No.CS/7/21-22, dated 17.02.2022, charging GST on such transactions. The petitioner under a bonafide belief that the GST paid on such services was admissible ITC, availed the same by filling GST-3B for February 2022. The ITC was properly reflected in the books of accounts and reported in the GST returns.

6.1 On 16.01.2023, inspection under section 67(1) of the CGST Act was conducted during which, the statement of partner of the petitioner firm was recorded wherein, he admitted that the ITC had been availed on GST paid towards leasehold rights. It was further clarified that the credit was taken under a bonafide belief, without knowledge that such ITC might be blocked under section 17(5)(d) of the CGST Act.

6.2 Subsequently, the Department recorded the statement of Shri Sanjay Soni, who confirmed that ITC of Rs.29,25,000/- was duly reflected in the GST returns and books of account. He stated that the credit had been duly availed under a bonafide belief and after due discussion and consultation with the Chartered Accountant, without waiting for initiation of any further proceedings, the petitioner voluntarily reversed the entire ITC of Rs.29,25,000/- vide DRC-03 (Debit E.No.DC2401230416348/DI2401230611178) dated 21.01.2023 and also discharged the applicable interest of Rs. 4,44,280/- vide DRC-03 (Debit E.No.2412230320082) dated 22.12.2023 to avoid further litigation.

7. Considering the aforesaid, the core issue pertains to ITC availed by the petitioner on acquisition of leasehold rights of GIDC plot. This Court in the case of ***Gujarat Chamber of Commerce and Industry & Ors.(Supra),*** has held that the assignment by sale or transfer of the leasehold rights of the plot allotted by the GIDC to the lessee in favour of the third party-assignee for a consideration shall be assignment/sale/transfer of benefits arising out of "immovable property" by the lessee-assignor in favour of third party-assignee, who would become lessee of GIDC in place of original allottee-lessee. Under such circumstances, provisions of section 7(1)(a) of the CGST Act providing for scope of supply read with clause 5(b) of Schedule II and clause 5 of Schedule III shall not be applicable to such transaction of assignment of leasehold rights of land and building and the same would not be subject to levy of GST as provided under section 9 of the

CGST Act. The Coordinate Bench of this Court after extensive scrutiny of the provision of the GST as well as the array of judgments has ultimately declared as under :-

> *"83. In view of foregoing reasons, assignment by sale and transfer of leasehold rights of the plot of land allotted by GIDC to the lessee in favour of third party-assignee for a consideration shall be assignment/sale/ transfer of benefits arising out of "immovable property" by the lessee-assignor in favour of third party-assignee who would become lessee of GIDC in place of original allottee-lessee. In such circumstances, provisions of section 7(1)(a) of the GST Act providing for scope of supply read with clause 5(b) of Schedule II and Clause 5 of Schedule III would not be applicable to such transaction of assignment of leasehold rights of land and building and same would not be subject to levy of GST as provided under section 9 of the GST Act.*
>
> *84. In view of above, question of utilisation of input tax credit to discharge the liability of GST on such transaction of assignment would not arise.*
>
> *85. The petitions accordingly succeed and impugned show cause notices and orders in original or appeal as the case may be, are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs."*

7.1. In the facts of the present case, admittedly, the petitioner acquired leasehold rights in the industrial plot allotted by the GIDC from M/S. MYSPACE INFRACON. In view thereof, the GST charged by the supplier and paid by the petitioner was contrary to the law. When the charging provision itself does not apply, any amount collected or retained by the department, whether directly as tax or indirectly by way of ITC reversal and interest, has no legal sanctity.

7.2 Considering the aforesaid, the reversal of ITC and payment of interest, which were premised solely on the assumption that GST was leviable on the transaction would not survive.

8. In our opinion, the respondents have erroneously

proceeded on the footing that the ITC was “blocked” under section 17(5)(d) of the CGST Act. Section 17(5)(d) of the CGST Act, presupposes the existence of a taxable inward supply, on which, tax is lawfully leviable and paid. In the facts of the present case, in light of the judgment of this Court, the transaction itself neither qualify as “supply” under section 7 of the CGST Act nor it is chargeable to tax under section 9 of the CGST Act. When there is no taxable supply, the question of applying blocking provision under section 17(5) of the CGST Act does not arise at all.

8.1 The respondents have alleged that the petitioner has contravened the provision of section 17(5)(d) of the CGST Act read with Gujarat Goods and Services Tax Act and has availed ineligible ITC. In an identical issue raised in ***Special Civil Application No.18068 of 2025,*** section 17(5)(d) of the CGST Act was interpreted and it was held that 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.

8.2. At this stage, it is apposite to refer to the decision rendered in ***Special Civil Application No.18068 of 2025,*** dated 10.02.2026. Relevant paragraphs of the said decision read thus:

> *“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 exposits 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."*

8.3. The facts of the present case are identical to the facts of the aforesaid writ petition being Special Civil Application No.18068 of 2025 wherein, it is not in dispute that the petitioner herein has not undertaken any construction activity and in view thereof, section 17(5)(d) of the CGST Act is erroneously invoked qua the petitioner herein. Accordingly, the allegation of availing blocked credit by the revenue is misconceived and in view thereof, the determination demand on the basis of section 17(5)(d) of the CGST Act is held to be unsustainable in the eyes of law.

9. Considering the settled legal position, as referred to herein above, the question of fraud or suppression or wilful misstatement does not arise in the facts of the present case to

invoke section 74(1) of the CGST Act on the allegation that the ITC constituted blocked credit under section 17(5)(d) of the CGST Act.

10. For the reasons as referred to herein above, the action of the revenue is contrary to the statutory provisions and settled legal position, which requires interference. Hence, the writ petition ***succeeds.*** The impugned order-in-original No. Div. VIII/AC-KDC/07/OA-GST/2025-26 dated 12.06.2025 along with summary order in Form DRC-07 bearing reference No. ZD240725000580T dated 01.07.2025 passed for the F.Y. 2021-22 as well as subsequent rectification order bearing reference No. ZD240725005705I dated 02.07.2025 along with the Order-in-Appeal No.VAD-CGST-002-APP-JC-939-2025-26 dated 27.02.2026 along with Form GST APL-04 bearing order no. ZD240326010836K dated 05.03.2026, are hereby quashed and set aside. Consequently, the respondents are directed to refund the tax of Rs.29,25,000/- paid through DRC-03 dated 21.01.2023 and interest of Rs.4,44,280/- paid through DRC-03 dated 22.12.2023, within a period of three (03) weeks from the date of receipt of this order. Rule is made absolute. No order as to costs.

(A. S. SUPEHIA, J)

(VAIBHAVI D. NANAVATI,J)

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