

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 25604 of 2022**

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KISHORE PROJECTS PRIVATE LIMITED  
Versus  
STATE OF GUJARAT

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Appearance:

MR AKSHAY A VAKIL(5473) for the Petitioner(s) No. 1  
MR SAMIRKUMAR I SIDDHAPURIA(12578) for the Petitioner(s) No. 1  
MR TRUPESH KATHIRIYA, LD.AGP for the Respondent(s) No. 1  
NOTICE SERVED for the Respondent(s) No. 2

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**CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI**  
and  
**HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

**Date : 22/12/2022**

**ORAL ORDER**  
**(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)**

1. The petitioner under Article 226 of the Constitution of India, seeks to quash and set aside the order dated 07/04/2022 passed under section 73 of the Act, whereby the demand is raised of Rs.31,95,464/- [consisting of tax of Rs.20,22,446/- (CGST + SGST), interest of Rs.9,70,774/- and penalty of Rs.2,02,244/-] for mismatch of ITC between GSTR 2A vs GSTR 3B of the GST Act.

2. The petitioner is a Company incorporated under the Companies Act,1956 and is in the business of Construction, Civil

Engineering and is registered as a dealer under the GGST/CGST Act. He regularly files his return of income.

3. The issue concerns the year 2019-2020. There was a mismatch between GSTR 3B and GSTR 2A. This was due to non filing of the returns by the suppliers of the goods. He purchased the goods during the period of 2019-20 from various suppliers to be used in its projects and the suppliers issued invoices bearing GGST and CGST Act. He made payments through the bank of those invoices.

4. When the petitioner filed Statutory returns in the form GSTR 3B with GST portal to avail an ITC credit in his credit ledger, the STO had issued the notice for return scrutiny under section 61 of the GST Act, on the ground that he has claimed excess ITC than the amount reflected in form GSTR 2A. Three reminders were sent to the petitioner.

He filed online Reply on 08/12/2021 in form GST ASMT-11 against the Notice issued in form ASMT-10 on the GSTN portal, pointing out that it was due to non filing of return by the parties, from whom, purchases have been made.

Intimation was given on 31/12/2021 under section 73 of the GST Act,2017 to the petitioner of the wrong claiming of ITC and thereby avoiding the payment of taxes.

5. According to the petitioner, the demand raised is quite much and it is something where the authority concerned ought to have considered that for no fault of his, this has happened.

It is further his say that he could not file the appeal within three months under section 107 of the Act, as his mother had passed away in January,2021 and sister was suffering from cancer. Only after provisional attachment order came that he has no other alternative but to rush this court under Article 226 of the Constitution of India.

6. This Court issued Notice for final disposal on 15/12/2022 and passed the following order :

1. *Draft amendment is allowed. To be carried out forthwith.*
2. *Petitioner is before this Court seeking to question the provisional attachment order of the respondent in month of October, 2022. There is no other efficacious remedy as he has missed the bus of filing the appeal.*

3. Prayers sought for are as follows:

*“A. This Hon'ble Court may be pleased to issue a writ of Certiorari or any other appropriate writ or order quashing and setting aside impugned order dated 07-04-2022 (annexed at Annexure A) as being wholly without jurisdiction, illegal and in violations of the provisions of law.*

*B. Pending notice, admission and final hearing of this petition, this Hon'ble Court may be pleased to stay further proceedings pursuant to impugned order dated 07-04-2022 (annexed at Annexure A);*

*C. Ex parte ad interim relief in terms of prayer B may kindly be granted;*

*D. Such further relief(s) as deemed fit in the facts and circumstances of the case may kindly be granted in the interest of justice for which act of kindness your petitioner shall forever pray.”*

4. Heard learned advocate Mr. Akshay A. Vakil for the petitioner. It is brought to our notice the fact that party had not filed the return and hence GSTR 2A certain bills are not reflected and hence entire responsibility of payment of tax is settled on the petitioner. According to him, the decision of **Union of India vs. Bharti Airtel Ltd. & Ors.** reported in (2022) 4 SCC 328 says that the Form GSTR 2A is only facilitated for taking any firm decision

*while doing the self-assessment. He requires to go back to the officer concerned for him to present his case and because of limitation of the Act is unable to so do it.*

5. *A copy is given to learned Asst. Government Pleader, who needs to take instructions in relation to the preferring of an appeal before the authority concerned.*

6. *Issue **Notice**, for final disposed, returnable on 21.12.2022. Learned Asst. Government Pleader would waive service of notice for respondent No.1. Service of notice through e-mode on the official e-mail ID of respondent No.2 is permitted.”*

7. The petitioner since has expressed his desire to go back to the appellate authority for his matter to be considered on merits, notice for final disposal was issued to the respondent.

8. Learned AGP Mr.Trupesh Kathiriya appeared for and on behalf of the respondent and on instructions, he submitted that on account of mismatch to the tune of Rs.20,22,446/-, the issue has arisen and yet another ground is also in relation to the limitation on period that could be condoned under section 107 of the GST Act, where beyond three months, the appeal is not permissible to be filed for want of availability of powers to condone the period beyond the statutory time period.

9. Considering the decision of the Hon'ble Apex Court rendered in the case of **Union of India Vs. Bharti Airtel Ltd. & Ors.** reported in **(2022) 4 SCC 328**, where the Hon'ble Apex Court has held that Form GSTR-2A is only a facilitator for taking an informed decision while doing self-assessment and also bearing in mind the personal circumstances of the petitioner, this court is allowing this petition permitting him to go to the appellate authority, which shall without taking an objection with regard to the limitation, decide this matter on merits.

10. Let an amount of pre-deposit i.e. Rs.2,02,245/- be deposited by the petitioner within a period of two weeks. Once that amount is deposited, he will be entitled to make a request for the release of his bank account, before the appellate authority immediately, which shall be decided within one week.

**(SONIA GOKANI, J)**

**(MAUNA M. BHATT,J)**

DIPTI PATEL