

 सत्यमेव जयते	Received on	:	06/11/2023
	Registered on	:	06/11/2023
	Decided on	:	27/05/2026
	Duration	:	Y : M: D:

IN THE COMMERCIAL COURT, AT ANKLESHWAR.

COMM. SUIT NO. 29 / 2023
EXH.

Plaintiff : Sureshchandra Shah partner of registered
: Partnership Firm Suresh & Co.
At:- F-5, Yogeshwar Complex, Link Road,
Bharuch

Versus

Defendant : Rajendra Prasad Gupta an Owner of Monika
Roofing
At : 1st Floor, Opp. Mahindra Showroom,
Old N. H.-8, GIDC, Ankleshwar

Suit : For recovery of Rs. 4,45,971/- and declaration.

Appearance :

Mr. N. R. ModiLd. Advocate for the Plaintiff.

Ex-Parte for the Defendant.

-:: J U D G M E N T ::-

The brief facts of the suit in nutshell are as under :

1. That the plaintiff is one of the registered partnership firm who

is engaged in business of Engineering & Contractor whereas the defendant is engaged in business of making Shade & Roofing. That the plaintiff and defendant are registered supplier under the GST Act having their GST Nos. 24AAKFS6628Q1ZF & 24AETPGO164J1ZG respectively, thus plaintiff is supplier and defendant is receiver. The plaintiff has given subcontract of Shade Roofing in Unit situated at Dahej Sez-2 to defendant, pursuant to thereof, the defendant has issued below mentioned tax invoice to plaintiff.

Sr. No.	Invoice No.	Date	Amt.	CGST	SGST	Total bill Amt
1	MR/010/RA01	01/06/2018	11,65,033/-	1,04,852.97/-	1,04,852.97/-	13,74,738.94/-
2	MR/45/RA03	29/08/2018	3,39,645/-	30,568/-	30,568/-	4,00,781/-
Total Amount					17,75,519.94/-	

2. Out of the above amount of Rs. 17,75,519.94/-, the defendant has set off Rs. 1,22,124/- and the plaintiff has paid a total amount of Rs. 16,53,396/- in respect of above mentioned invoice as per the instruction of defendant. The plaintiff has made entries of the same in defendant's ledger account. Thus, the plaintiff has paid the tax payable to government i.e. CGST & SGT to the defendant, which the defendant supposed to deposit in Government department on time. Since the plaintiff has paid the amount of above tax invoice, he is entitled to take Input Tax Credit (ITC) of GST. The plaintiff has taken the ITC of defendant's tax in his GST return. The defendant has not uploaded both the tax invoices on the GST

portal and has not deposited the GST collected from the plaintiff in Government, therefore that amount does not appear in plaintiff's Electronic Credit Ledger. The plaintiff has informed the defendant about it, but the defendant has not deposited the said GST amount GST department till date.

3. As per Central Goods and Service Tax Act, The plaintiff has took legally leviable ITC of said amount from dated 11/10/2018 to 03/05/2019, but the defendant has not deposited GST amount in Government. Therefore, present suit preferred by plaintiff seeking declaration and recovery of Rs. 4,45,971/- from the defendant.
4. Upon the service of summons, the defendant did not appeared, therefore ex-parte order against the defendant was passed by this Court on 04/12/2025.
5. The parties had adduced following oral as well as documentary evidence in support of his case :

Plaintiff's oral evidence :

Sr. No.	Exh.	Particulars	Date
01	10	Deposition of Sharadbhai Shah (witness).	02/08/2025

Plaintiff's documentary evidence :

Sr. No.	Exh.	Particulars	Date
1	15	Form-G.	19/06/2020
2	16	Original of authority letter.	02/09/2021

3	17	GST registration certificate.	19/09/2017
4	18	Tax invoice of Rs. 4,00,781/-.	29/08/2018
5	19	Tax invoice of Rs. 13,74,739/-.	01/06/2018
6	20	Computerized copy of ledger account of defendant in plaintiff's firm.	till 01/04/2018 to 31/03/2018
7	21	Letter written to GST Commissioner by Authorised Signatory of plaintiff firm.	27/04/2021
8	22	Letter written to GST Commissioner by Authorised Signatory of plaintiff firm.	04/04/2021
9	23	Office copy of notice issued to defendant.	10/05/2021
10	24	RPAD receipt.	10/05/2021
11	25	Reply of notice given by defendant.	01/06/2021
12	26	Certificate issued by C.A.	31/12/2021
13	27	Authority letter.	22/05/2025
14	28	Aadhar Card of Sharadbhai Shah.	---
17	29	Show Cause notice issued by GST Office, Vadodara.	29/03/2023
18	30	Final order passed by GST Office, Vadodara in respect of above show cause notice.	30/10/2023
19	31	Internet copy of emails sent by GST Office, Vadodara to plaintiff.	----
20	32	Closing Pursis.	30/09/2025

6. Heard Ld. Advocate Mr. N. R. modi for the plaintiff side whereas no one is appeared for the defendant side.

7. For final disposal of suit, this Court has framed the following issue at Exh. 07.

1. Whether the plaintiff proves that, he had given contract to defendant, regarding which, the defendant had issued a tax invoice of Rs. 17,75,520/- to plaintiff ?
2. Whether the plaintiff proves that, he has paid Rs. 16,53,396/- to defendant regarding the work of shade roofing at Dahej Sez-2 ?
3. Whether the plaintiff proves that, out of the amount paid to defendant of Rs. 16,53,396/-, the defendant was supposed to deposit an amount of Rs. 2,70,841/- with the Government, which the defendant has defaulted by not depositing ?
4. Whether the plaintiff proves that, he is entitled to recover GST amount of Rs. 2,70,841/- with interest and deposit it with Government ?
5. What order ?
6. What decree ?

8. My answer for following issues are as under :

1. In Affirmative.
2. In Affirmative.
3. In Affirmative.
4. Partly in Affirmative.
5. As per final order.
6. As per final order.

-::REASONS::-

9. The plaintiff has filed present suit for declaration & to recover amount with interest. To prove its case, the Plaintiff has produced deposition of witness Sharadbhai Shah at Exh. 10 under Order 18 Rule 4 of CPC, wherein he has narrated all the facts which is mentioned in Exh. 1, hence the same is not produced for the sake of convenience. The aforesaid plaintiff was not cross examined from the defendant side. The plaintiff has produced list of documentary evidence at Exh. 15 to 31. Now discuss all issued as follows.

ISSUE Nos. 01 & 02 :

10. In order to substantiate the aforesaid issues, the plaintiff has produced documentary evidence at Exh. 15 to 19, comprising Form-G, the Power of Attorney, GST Registration Certificate of the plaintiff firm, invoices issued by the defendant company, and the ledger account of the defendant company maintained by the plaintiff firm. Upon perusal of the invoices produced at Exh. 18 and 19, it clearly transpires that the defendant had issued two invoices for amounts of Rs. 4,00,781/- and Rs. 13,74,738.94/-, inclusive of CGST and SGST. Out of the said amount, a sum of Rs. 1,22,124/- was adjusted by the defendant, and consequently, the plaintiff paid a total amount of Rs. 16,53,396/- in respect of the aforesaid invoices as per the instructions of the defendant. The aforesaid fact is further corroborated by the ledger account of the defendant company maintained by the plaintiff firm and

produced at Exh.20, wherein an amount of Rs. 16,53,396/- has been shown as debited by the plaintiff firm to the account of the defendant during the period from 21/05/2018 to 01/03/2019. Therefore, in view of the aforesaid documentary evidence, I answer Issue Nos. 1 & 2 in the affirmative.

ISSUES No. 03 :

11. The burden to prove this issue is upon the plaintiff. The plaintiff has specifically pleaded that out of the total amount of Rs. 16,53,396/- paid to the defendant towards supply and GST, an amount of Rs. 2,70,841/- was collected by the defendant as GST & CGST, which the defendant was legally bound to deposit with the Government. The plaintiff has further contended that although the plaintiff claimed Input Tax Credit (ITC) in its GST returns on the basis of the tax invoices issued by the defendant, but the defendant failed to upload the said invoices on the GST portal and also failed to deposit the tax amount with the Government. Consequently, the said amount was not reflected in the plaintiff's Electronic Credit Ledger, thereby causing financial loss to the plaintiff.

12. To prove the aforesaid factum, the plaintiff has produced show cause notice dated 29/03/2023 issued u/s 74 of CGST Act, 2017 by GST Office, Vadodara at Exh 29, in which the GST Officer has mentioned that, "***on tallying the invoice reflecting in the GSTR-2A with the credit of the Tax Payer, it was found that there were some invoices in their credit /***

purchase ledger, on which they had availed ITC, but the same were not reflecting in their GSTR-2A. On being pointed out, the taxpayer agreed with the audit observation and reversed the ITC, but did not pay applicable interest and penalty. Hence, it appears that the taxpayer has wrongly claimed undue ITC in respect of which, the tax is not paid to the Government either in cash or through utilization of ITC in respect of such invoices”. The plaintiff has produced calculation sheet (Annexure-B) along with the aforesaid show cause notice, from which it appears that, the plaintiff has taken inadmissible input tax credit against the invoices of defendant. Upon serving of aforesaid Show Cause Notice from GST Office, Vadodara, the plaintiff, through his Ld. pleader appeared for personal hearing before the competent authority. The plaintiff has also produced the certified copy of final order passed by GST Office, Vadodara at Exh.30, in which the plaintiff was directed to pay interest and penalty on the wrongly availed ITC and utilized in GST-3B returns filed for the period July 2017 to March-2020 as raised in Show cause Notice (Exh. 29).

13. On appreciation of the pleadings, oral evidence and documentary evidence produced on record, it is evident that the plaintiff had made payment of the invoice amounts including GST & CGST to the defendant. The tax invoices relied upon by the plaintiff clearly disclose charging of GST & CGST to the defendant. On the other hand, the defendant

has failed to produce any cogent documentary evidence to establish that the GST amount of Rs. 2,70,841/- was actually deposited with the Government or that the invoices were duly uploaded on the GST portal. Mere denial by the defendant in reply (Exh. 25) against the legal notice (Exh. 23) issued by plaintiff is not sufficient in absence of documentary proof.

14. Under the provisions of the GST law, once GST is collected from the purchaser, the supplier is under a statutory obligation to deposit the same with the Government and comply with return filing requirements. Failure to do so deprives the purchaser of lawful ITC and results in monetary loss to the purchaser. Therefore, this Court holds that the plaintiff has successfully proved that out of the total amount of Rs. 16,53,396/- paid to the defendant, the defendant was required to deposit GST amounting to Rs. 2,70,841/- with the Government, but the defendant defaulted in depositing the same and also failed to upload the relevant tax invoices on the GST portal, due to such act on the part of defendant, the plaintiff has to suffer from imposition of penalty and interest on wrongly availed ITC by GST Office, Vadodara. Accordingly, this issue No. 03 is decided Affirmative, in favour of the plaintiff and against the defendant.

ISSUE Nos. 04 to 06 :

15. The plaintiff firm is authorized person of plaintiff firm. The

plaintiff has proved the facts mentioned in the plaint with documentary as well as oral evidence. The plaintiff has demanded an outstanding amount Rs. 2,70,841/- with 18 % interest from date of filing the suit till its realization. The section 34 of CPC is mentioned herein as under.

Where and in so far as a decree is for the payment of money, the Court may, in the Decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the Suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the Suit. The rate of Interest can be divided into three stages which are as under.

(1) The Rate of Interest before the Suit : In AIR 1957 Rajasthan 89, it is held that rate of Interest before filing of the Suit can be granted.

(2) The Rate of Interest from the Date of Institution to Date of Decree : In AIR 1963 Rajasthan 93 it is held that for the rate of Interest from Date of Institution to the Date of Decree, the Court has descretion but the same should be granted by keeping in mind the sound principles of Justice.

(3) The Rate of Interest from the Date of Decree until its realisation : In the rate of Interest from the Date of Decree until its realisation the Court can use discretionary power in this stage.

16. Now as per the discussed above, it is clear that in the Stages 1 and 2, the Contractual rate of Interest be granted but in Stage No. 3 the Court can interfere and use discretionary power and hence taking judicial notice of the same, for stages (1) and (2) the Plaintiff is entitled for 18% rate of interest and for stage (3) 09% rate of interest will be fair and just. The said all document produced by the plaintiff are not challenged by defendants at any manner. Defendants neither challenged the

contents nor legality of the documents produced by the plaintiff. The defendants have not cross-examined the plaintiff, hence the testimony of plaintiff remains unchallenged. Record shows that, the documents and the facts mentioned by the plaintiff is believable. **Hence, I answered Issues No. 04 Partly in Affirmative** and resultantly of all the above discussion, this Court passes following order for Issue No. 5 & 6 in the interest of justice.

-:: FINAL ORDER ::-

1. The suit is hereby partly allowed.
2. It is hereby declared that, the plaintiff has paid the amount of CGST & SGST to defendant, but the defendant has defaulted by not depositing the same with the Government.
3. The defendant is hereby ordered to pay the amount of tax totaling Rs. 2,70,841/- with interest at the rate of 9% P.A. to the plaintiff from the date of institution of this suit till its realization.
4. The defendants have to bear their own cost and the cost of plaintiff.
5. Decree be drawn accordingly.

[Pronounced in open Court on date 27/05/2026]

**Place : Ankleshwar
Date : 27/05/2026**

**: Yogesh Narendrakumar Patel :
Judge , Commercial Court
Ankleshwar
Judge Code : GJ00664**