

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6085 of 2025

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M/S ITD CEMENTATION INDIA LIMITED

Versus

UNION OF INDIA & ORS.

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Appearance:

MR.SUJIT GHOSH, LD.SR.ADV WITH MR.ADITYA J PANDYA(6991) for the
Petitioner(s) No. 1

DEEPAK N KHANCHANDANI(7781) for the Respondent(s) No. 3,5

MS.SHRUNJAL SHAH, AGP for the Respondent(s) No. 2

MR PRADIP D BHATE(1523) for the Respondent(s) No. 1,4

TIRTH NAYAK(8563) for the Respondent(s) No. 6

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR.JUSTICE D.N.RAY

Date : 02/05/2025

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Advocate Mr.Sujit Ghosh with learned advocate Ms.Mannat Waraich, learned advocate Ms.Anshika Agrawal and learned advocate Ms.Arya Mittal for learned advocate Mr.Aditya J. Pandya for the petitioner and learned Assistant Government Pleader Ms.Shrunjal Shah for the respondent-State.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs :

"(i) Quash the Impugned Order-in-Original dated 27.01.2025 bearing No.161/CGST/(Ahmadabad South)/ADC/PBM/24-25 issued by Respondent No. 5 which confirms the demand of Rs.17,33,40,000/- along with interest and penalty on provision of corporate guarantee for the period 01.07.2017 to 31.03.2023, as being wholly without jurisdiction, illegal, arbitrary, confiscatory as also violative of Articles 14 and 19(1)(g) of the Constitution;

(ii) Quash the Impugned Show-Cause Notice dated 19.07.2024 bearing No. DGGI/AZU/Gr-D/36-63/2024-25 issued by Respondent No.6 which proposes to raise the demand of Rs.17,33,40,000/- along with interest and penalty on provision of corporate guarantee for the period

from 01.07.2017 to 31.03.2023, as being wholly without jurisdiction, illegal, arbitrary, confiscatory as also violative of Articles 14 and 19(1)(g) of the Constitution;

(iii) Strike down and declare Rule 28(2) of the CGST Rules, 2017 inserted vide Notification No.52/2023-Central Tax dated 26.10.2023 read with recommendations of Respondent No. 4 during the 52nd GST Council Meeting held on 07.10.2023 and amended vide Notification No.12/2024 dated 10.07.2024 read with recommendations of Respondent No. 4 during the 53rd GST Council Meeting held on 22.06.2024 as being discriminatory, arbitrary, unreasonable, confiscatory and thereby violative of Articles 14 and Article 19(1)(g) of the Constitution;

(iv) Strike down and declare Impugned Circular No.204/16/2023-GST dated 27.10.2023 issued by Respondent No.3 as being arbitrary and ultra vires Section

168 of the CGST Act, 2017, and Rule 28(2) of the CGST Rules, 2017;

(v) Strike down and declare Impugned Circular No.225/19/2024-GST dated 11.07.2024 issued by Respondent No.3 as being arbitrary, confiscatory, illegal and ultra vires Section 168 of the CGST Act, 2017 and Rule 28(2) of the CGST Rules, 2017;

(vi) Declare that activity of provision of corporate guarantee by a JV partner to bank/financial institution on behalf of Unincorporated Joint Venture as an obligation in terms of the JV Agreement and without charging any consideration does not qualify as a supply under Section 7 of the CGST Act, 2017;

(vii) Alternatively, declare Section 15(4) of the CGST Act, 2017 which provides for delegation of essential legislative functions without providing any guidelines or principles whatsoever and grants unbridled power to Respondent Nos. 1 and 2 to determine rules in

relation to supply between related persons, as violative of Article 14 of the Constitution;

(viii) Declare that Notification No. 2/2017-Central Tax dated 19.06.2017 read with the Corrigendum dated 29.07.2019 issued by Respondent No. 1 is ultra vires Section 2(91) of the CGST Act, 2017 read with Section 3 and 5 of the CGST Act, 2017;

(ix) Declare that Notification No.14/2017-Central Tax dated 01.07.2017 read with the Corrigendum dated 29.07.2019 issued by Respondent No. 1 is ultra vires Section 2(91) of the CGST Act, 2017 read with Section 3 and 5 of the CGST Act, 2017;

(x) Declare that Circular No.3/3/2017 dated 05.07.2017 issued by Respondent No.3 is ultra vires Section 2(91) of the CGST Act, 2017 in as much as it invests Respondent No.5 with the power of a "Proper Officer" to exercise powers under Section 74 of the CGST Act, 2017;

(xi) Stay the operation of Impugned Order-in-Original dated 27.01.2025 bearing No. 161/CGST/ (Ahmadabad South)/ ADC/PBM/24-25, Impugned Circular No.204/16/2023-GST dated 27.10.2023 and Circular No.225/19/2024-GST dated 11.07.2024, Rule 28(2) of the CGST Rules, 2017 and restrain the Respondents from taking any coercive steps for recovery of tax, in consequence of or pursuant to Impugned Order-in-Original dated 27.01.2025, Impugned Circular No.204/16/2023-GST dated 27.10.2023 and Circular No.225/19/2024-GST dated 11.07.2024, during the pendency of the present writ petition; and

(xii) Issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the present case."

3. Learned Senior Advocate Mr.Sujit Ghosh for the petitioner, at the outset, submitted that

the issue regarding the levy of GST on the corporate guarantee is pending before this Court in Special Civil Application No.12179 of 2024.

4. Considering such submission, issue **Notice**, returnable on **12th June, 2025**.

5. In the meanwhile, no coercive action shall be taken by the respondent-Authorities during pendency of this petition.

Direct service is permitted.

To be heard with Special Civil Application No.12179 of 2024 and other allied matters.

(BHARGAV D. KARIA, J)

(D.N.RAY, J)

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