

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 13296 of 2020

NETRIKA TRENDS

Versus

THE DEPUTY COMMISSIONER APPEALS & 3 other(s)

Appearance:

MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1

MR UTKARSH R SHARMA(6157) for the Respondent(s) No. 4

MR CHINTAN DAVE, AGP NOTICE SERVED BY DS(5) for the
Respondent(s) No.1,2,3

CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 08/02/2021

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. Draft amendment is allowed. The necessary incorporation shall be carried out at the earliest.
2. By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs:-

40(a) Direct the respondent no.1 to condone the delay and allow the petitioner to be heard on merits.

(b) In alternative allow Revocation of cancellation of registration.

(c) Pending the admission, hearing and final disposal of this petition, grant ad interim relief.

(d) Any other and further relief deemed just and proper be granted in the interest of justice;

(e) To award costs and incidental to this application be paid by the

respondents;

3. On 25/01/2021 this Court passed the following order.

“We have heard Mr. Avinash Poddar, the learned counsel appearing for the writ applicant, Mr. Chintan Dave, the learned AGP for the State respondents and Mr. Utkarsh Sharma, the learned counsel for GSTN – the respondent no. 4.

There are two suggestions at the end of Mr. Chintan Dave, the learned AGP for the purpose of redressing the controversy in the present litigation.

We request Mr. Dave to place both the proposals by way of short reply, so that on the next date of hearing, this matter can be disposed of.

Post this matter on 01.02.2021 on top of the board.”

4. On 01/02/2021 this Court passed the following order.

“Mr. Chintan Dave, the learned AGP submits that he has filed appropriate reply as suggested by this Court.

The reply filed by the respondents needs to be placed on record of this Case. Let the same be done by the end of the day today.

Post this matter on 03.02.2021 on top of the Board.

Mr. Utkarsh Sharma, the learned counsel appearing for the GSTN is unable to join the video conference as he is held up in some other Court.”

5. Pursuant to the order passed by this Court dated 01/02/2021 referred to above, the affidavit-in-reply has been filed by one Shri Vivekkumar M. Damor, Assistant Commissioner of State tax stating as under:-

1. *The petitioner in the present writ petition has prayed for revocation of cancellation of the Registration No. being GSTIN 24AAYPB8860D2ZH.*

2. *In this regard pursuant to the directions issued by this Hon'ble*

Court the respondent authorities have tried to resolve the controversy by suggesting an amicable solution. The petitioner may approach the respondent authorities for transfer of Input Tax Credit in accordance with the provisions contained in Section 18 of the Gujarat Goods and Services Tax Act, 2017 read with Rules 41 and 41A of the Gujarat Goods and Services Tax Rules, 2017. Alternatively, the petitioner may approach the respondent authorities u/s.54 of the Gujarat Goods and Services Tax Act, 2017.

3. *It is further submitted before this Hon'ble Court that the transfer of the Input Tax Credit to the existing GSTIN number of the petitioner may create some functionality issues as the time limit within which the petitioner was under a statutory obligation to approach the respondent authorities has already expired. In this regard the respondent authorities may need some technical assistance from the respondent no.4 viz.GSTN. Therefore, this Hon'ble Court may also issue appropriate direction to the respondent no.4 GSTN for providing necessary technical assistance.*

6. We have heard Mr. Poddar, the learned counsel appearing for the writ-applicant and Mr. Chintan Dave, the learned AGP appearing for the State – respondents and Mr. Utkarsh Sharma, the learned counsel appearing for the respondent no.4 – Goods and Service Tax Network.

7. The respondents are ready and willing to resolve the controversy as suggested in the reply. The writ-applicant shall approach the concerned authorities for transfer of the Input Tax Credit in accordance with provisions contained in Section 18 of the Act, 2017 read with Rules 41 and 41A of the Rules, 2017. If the writ-applicant deems fit, he may approach the authorities in the alternative under Section-54 of the Act, 2017.

8. It is sought to be clarified that the transfer of the Input Tax Credit to the existing GSTIN number may consume some time and for that purpose, the authorities may even need some technical assistance from the respondent no.4 – GSTN.

9. We dispose of this writ-application with a direction to the respondents that once the writ-applicant comes forward with a request for transfer of the Input Tax Credit in accordance with the provisions contained in Section-18 of the Act, the request shall be immediately look into and needful shall be done. For this purpose, if some assistance of the GSTN is required, the same may be availed from the GSTN. The GSTN is directed to cooperate and see to it that the problem is solved. Let this exercise be completed at the earliest.

10. With the above, this writ-application stands disposed of.

One copy of this order may be furnished to Mr. Chintan Dave, the learned AGP as well as Mr. Utkarsh Sharma, the learned counsel appearing for the GSTN for its onward communication.

(J. B. PARDIWALA, J)

(ILESH J. VORA,J)

A. B. VAGHELA

