IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1231 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
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M/S KAMNATH PRIVATE LTD.
Versus
STATE TAX OFFICER

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Appearance:
MR. JAIMIN R DAVE(7022) for the Petitioner(s) No. 1
MS HIRVA R DAVE(10742) for the Petitioner(s) No. 1
PRIYANK S DAVE(9465) for the Petitioner(s) No. 1
MS. SHRUNJAL SHAH, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 16/10/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. Heard learned advocate Mr. Jaimin Dave for the petitioner and learned Assistant Government Pleader Ms. Shrunjal Shah for the respondent.

2. Rule returnable forthwith. Learned Assistant Government Pleader Ms. Shrunjal Shah waives

service of notice of rule for and on behalf of the respondent.

3. Having regard to the controversy arising in this petition which is in a narrow compass, with the consent of the learned advocates for the parties, the same is taken up for hearing.

4. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order 7.10.2021 passed by the Sales Tax Officer, Ghatak-2, Rajkot (hereinafter referred to as 'the respondent' for short) whereby the application filed by the petitioner under "Vera Samadhan Yojna" (hereinafter referred to as 'the Amnesty Scheme' for short) under the provisions of Gujarat Value Added Tax Act, 2003 (hereinafter referred to as 'the Act' for short) was rejected on the ground that there was delay of two days in depositing last installment.

5. Brief facts leading to the filing of the present writ-petition are as under:

5.1 The petitioner is a Company incorporated under the provisions of Companies Act, 1956, inter alia, registered under the provisions of the Act. The petitioner filed an application under the Amnesty Scheme for the Assessment Year 2015-16. As per the provisions of the Scheme, the petitioner was required to pay an amount of Rs.12,50,258/- towards full and final settlement of outstanding dues. The petitioner was required to deposit an amount of Rs.12,50,258/- on or before 31.8.2021.

5.2 It is the case of the petitioner that an amount of Rs.1,25,025.8 was paid by the petitioner for first five installments. Thereafter, online portal itself readjusted the installment amount to Rs.1,02,293.84 from the sixth installment. On account of such automatic readjustment of the installments, an amount of

Rs.34,102/- was short paid as on 31.8.2021. It was under these circumstances the petitioner made an attempt to make payment through E-payment option on the online portal of the respondent. However, the E-payment option indicated that any payment made through this option will not be reconciled with the Amnesty Scheme. Therefore in such circumstances, the petitioner approached the respondent for resolution of issue and providing necessary assistance in payment of remaining amount of Rs.34,102/-.

5.3 It is the case of the petitioner that between 29.8.2021 to 31.8.2021, the petitioner also made attempts to make payment of differential amount of Rs.34,102/- through E-Services or E-payment. However, due to some technical issues on the online portal, the petitioner was not able to make the payment. To substantiate the case, the petitioner has also provided a copy of the screen shots indicating technical difficulties in online portal of the respondent.

5.4 It was in this situation, the petitioner made payment of Rs.40,500/- on 2.9.2021 i.e. 2 days of the scheduled deadline and informed the respondent about the payment. The petitioner submitted a request letter on 2.10.2021 requesting the respondent to accept the payment made on 2.9.2021 and further requested that his case would be considered positively under Amnesty Scheme. By way of impugned communication dated 7.10.2021, the respondent rejected the application of the petitioner under Amnesty Scheme on account of delay of 2 days in paying last installment. Apart from that, the respondent freezed the Bank Account of the petitioner and created lien on the outstanding dues under VAT. Thereafter on 26.7.2022, the respondent passed an order rejecting the application of the petitioner under the Amnesty Scheme, which is impugned in the present writ-petition.

6. Learned advocate Mr. Jaimin Dave for the petitioner submitted that the Petitioner was required to pay total amount of Rs. 12,50,258/- on or before 31.08.2021, as per notification dated 09.07.2021. Accordingly, Petitioner paid an amount of Rs. 1,25,025.80 in first five installments and after that Respondent's online portal itself readjusted the installment amount to Rs. 102293.84 from sixth installment. It is submitted that such readjustment was unilateral. It is submitted that on account of such automatic readjustment of the installments, an amount of Rs. 34,102/- was short paid as on 31.08.2021. Therefore, Petitioner made an attempt to make payment through "E-payment" option on the online portal of the Respondent. However, the "E-payment" option indicated that any payment made through this option will not be reconciled with "Amnesty Scheme". Therefore, Petitioner also approached the Respondent for resolution of issue

and providing necessary assistance in payment of remaining amount of Rs. 34,102/- on or before 31.08.2021. However, Respondent could not provide any workable solution.

6.1. Learned advocate Mr. Dave submitted that between 29.08.2021 to 31.08.2021, Petitioner also made attempts to make payment of an amount of Rs. 34,102/- through E-services (VAT) > E-Payment. However, due to some technical issue on the online portal, Petitioner was not able to make the payment. That on account of such circumstances, beyond the control of the Petitioner, it could not make payment on or before 31.08.2021.

6.2 Mr. Dave further submitted that Petitioner made payment of Rs. 40,500/- on 02.09.2021 and informed Respondent. It is submitted that delay of two days in making payment was bona fide and on account of a technical glitch. It was submitted that Petitioner even approached Respondent, but Respondent could not give solution. Therefore, rejection of Petitioner's application under Amnesty Scheme on the ground of delay in making payment is completely arbitrary and high handed.

7. Per contra, learned Assistant Government Pleader Ms. Shrunjal Shah was not in a position to controvert the fact that there may be bonafides on the part of the petitioner in making the payment. It was categorically accepted by Ms. Shah that regular installments were paid by the petitioner. However, due to some technical glitches, the differential last payment was made only after delay of two days of the scheduled date. In wake of such submissions, Ms. Shah submitted that appropriate order may be passed.

8. Having heard learned advocate for the parties and having perused the material on record, it is

an admitted position that the petitioner has paid the first five installments within time limit. The petitioner was also on the verge of paying the last installment on time. However, due to some technical issue on the online Portal, the petitioner was not able to make payment of differential amount of Rs.34,102/-. It is an uncontroverted fact that after paying substantial amount, the petitioner was required to pay remaining amount of 34,102/-. Even attempts were made by the petitioner to pay the differential amount which was short on record. It was only due to technical glitches of the online portal, the amount was paid after delay of 2 days. There was a clear and unequivocal intention of the petitioner to avail the Scheme and this fact is not disputed by the respondent. Even this issue has been categorically discussed by this Court in case of Pranav Ashokkumar Shah v. Assistant Commissioner of State Tax Ghatak 10, in SCA No. 13192 of 2023, wherein it is observed as under:

6.3 In ***Sky Industries Ltd Vs. State of Gujarat, reported in [2023 SCC OnLine Guj 4586]****, this Court while referring to the decision of* ***Sunflowers Developers Vs. State of Gujarat, reported in [2019:GUJHC:56173-DB]*** *recorded as under:-*

> *"7.4 Thus, from the observations made by the Division Bench of this Court, as referred to herein above, it can be said that the object of the amnesty scheme is to bring about expeditious and effective resolution of old disputes and recoveries of old outstanding dues of the Government and reduction of administrative costs. Since such scheme is applicable to all pending cases, the officers acting under the relevant statutes are expected to respect the object of the scheme and to ensure that the assessees get the benefit under the scheme.*
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> *7.5 In view of the above discussion, we are of the considered view that merely because the Petitioner inadvertently paid Rs.2000/- less towards principal outstanding amount of tax, it cannot be*

denied the benefit of the Amnesty Scheme. This petition, therefore, deserves to be allowed.

6.4 The Hon'ble Delhi High Court in ***IA Housing Solution (P.) Ltd. Vs. Principal Commissioner of Income-tax [2023] 147 taxmann.com.198 (Delhi)*** *while referring the Vivad Se Vishwas Scheme had held as under:-*

> *"17. Moreover, the principle of a judgment rendered in a normal circumstance cannot be applied to abnormal and extraordinary circumstances such as Covid wherein the organisation of the Petitioner s were affected due to death of a Director and that too when the Petitioner s in no manner derived any benefit because of delay.*
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> ***THOUGH RESPONDENTS HAVE NO POWER TO CONDONE THE DELAY IN PAYMENT, YET THIS COURT IN EXTRAORDINARY WRIT JURISDICTION CAN PASS ANY ORDER NECESSARY TO REMEDY INJUSTICE.***
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> *18. Though this Court is in*

agreement with the submission of learned counsel for the respondents that the power to condone the delay with regard to delay in payment is not vested with the Departmental Authorities, yet this Court under its inherent powers in extraordinary writ jurisdiction under Article 226 of the Constitution of India can pass any order necessary to remedy the injustice. The Supreme Court in B.C.Chaturvedi v. Union of India, (1995) 6 SCC 749 has held "It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice".

19. One of us (Manmohan, J) in Siddharth International Public School v. Motor Accident Claim Tribunal, (2016) SCC OnLine Del 4797, para 41 has held, "it is settled law that this Court has extremely broad jurisdiction under Article 226 of the Constitution and *under the said Article it can pass whatever orders are necessary for doing equity and justice. The Supreme Court in N.S. Mirajkar v. State of Maharashtra, 1966 3 SCR 744 has held that "unlike a inferior court, in respect of a High Court, which is also a Court of Record, it is assumed that every action is within its jurisdiction, unless expressly shown otherwise".*

20. Consequently, the power of the High Court under Article 226 of the Constitution of India to grant relief in extraordinary and exceptional circumstances cannot be taken away or curtailed by any legislation.

21. In fact, the Supreme Court in Dal Chandra Rastogi v. CBDT (2019)104 taxmann.com 341 (SC) wherein the assessee had filed a declaration of undisclosed income under the Income Declaration Scheme, 2016 and had failed to pay the third installment of the remaining 50 per *cent of tax,surcharge and penalty permitted the assessee to make late deposit of tax under Income Declaration Scheme subject to interest at the rate of 12% per annum. It is pertinent to mention that there was no provision for late deposit of tax in the Income Declaration Scheme, 2016. Yet the Supreme Court taking note of the genuine hardship faced by the assessee and short delay in payment, ruled in favour of the taxpayer.*

NO PREJUDICE CAUSED TO THE RESPONDENTS BY ACCEPTING THE PRAYER OF THE Petitioner S. RATHER, SUCH ACTION SHALL HELP ACHIEVE THE OBJECTIVES OF THE VSV ACT.

22. This is also a fit case where no prejudice will be caused to the Respondents by accepting the prayer of the Petitioner s. Rather, the Respondents benefit and achieve the purpose of the Scheme, namely, to reduce pendency of cases, generate timely revenue for the government *and provide certainty and savings of resources that would be spent on the long-drawn litigation process.*

23. Consequently as the delay in payment in the present cases were unintentional and supported by justifiable reasons, this Court is of the opinion that the cause of substantial justice deserves to be preferred, and this unintentional delay deserves to be condoned. This approach will only further the object and purpose of the VSV Act."

7. From the Order of the Hon'ble Apex Court in ***Yashi Construction Vs. Union of India*** *in* ***SLP (Civil) 2070 of 2022****, it is not apparent whether Covid hardship etc. were either pleaded before the Court or whether the amount concerned was fully paid up by the Assessee in the said case. Hence, this Court in these circumstances deems it more appropriate to follow the decision of the Hon'ble Apex Court in the case of* ***Dalchandra Rastogi Vs. CBDT*** *reported in* ***(2019) 104 taxmann.com 341****, which has been referred to and relied upon by a Division Bench of the*

Hon'ble Delhi High Court in ***IA Housing*** *(Supra). This Court is accordingly of the view that the Petitioner , due to demonstrable hardships was unable to pay the last two installments under the said Scheme after having diligently paid the first ten installments within the stipulated time, cannot be said to have rewritten or modified the "Vera Samadhan Yojna 2019" in any manner.As held in the catena of decisions of this Court, the Hon'ble Delhi High Court as well as the Hon'ble Supreme Court, the object and purpose of an Amnesty Scheme has to be seen from that angle which furthers the object of the Scheme, than which merely renders the Scheme illusory and denies the benefit to the Assessee and adds to the pendency of conflicts with the State. In such view of the matter, the present petition succeeds. The order dated 02.05.2022 disposing of the Petitioner 's application under "Vera Samadhan Yojna 2019" is hereby quashed and set aside. The delay of 29 days in making the payment under the aforesaid scheme is hereby condoned. Consequently, the Demand Notice dated 10.07.2023 is also set aside. Rule is made absolute to the aforesaid extent. No order as to costs."*

9. In view of the settled position of law and the apparent bonafides of the petitioner which are on record, the present petition succeeds. The order dated 7.10.2021 rejecting the application of the petitioner under the Amnesty Scheme is hereby quashed and set-aside. The delay of 2 days in making the payment in the aforesaid Scheme is condoned. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

SAJ GEORGE