

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 5453 of 2025**

=====

RELIANCE FORMULATION PRIVATE LIMITED

Versus

ASSISTANT COMMISSIONER OF STATE TAX, GHATAK 21, DIVISION 2

=====

Appearance:

MR ASHUTOSH S DAVE(8865) for the Petitioner(s) No. 1

MS SHRUNJAL SHAH, AGP for the Respondent(s) No. 1

=====

CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 27/06/2025

ORAL ORDER**(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr.Ashutosh S. Dave for the petitioner and learned Assistant Government Pleader Ms.Shrunjal Shah for the respondent who appears on advance copy.

2. Issue **Notice**, returnable forthwith. Learned Assistant Government Pleader Ms.Shrujnal Shah waives service of notice for and on behalf of the respondent.

3. This petition is filed under Article 226 of the Constitution of India with the following prayers :

"A. Hold that the impugned advisory is arbitrary, illegal and are de hors to the provisions of the Central/Gujarat Goods and Services Tax Act, 2017 as also the Central/Gujarat Goods and Services Tax Rules, 2017 and as a consequence thereof be pleased to quash and set-aside the advisory dated 18.12.2024 is issued by the Respondent to the Petitioner which is annexed at ANNEXURE A to the petition;

B. Pending the admission, hearing and final disposal of the petition, be pleased to stay the operation, implementation and execution of the impugned advisory dated 18.12.2024 issued by the Respondent as is annexed at ANNEXURE A to the petition."

4. The brief facts of the case are as under:

4.1. The petitioner is a private limited company specialised in formulation of psychotropic range of Ayurvedic and herbal products as well as variety of antibiotics, enzymes and vitamins. The petitioner is registered under the provisions of the Central/State Goods and Services Tax Act, 2017 (for short 'the GST Act') and is regularly filing its return of income from 01.07.2017 as per the provisions of Section 39 of the GST Act.

4.2. It is the case of the petitioner that the petitioner received an advisory dated 18.12.2024 for financial years 2017-18, 2018-19, 2021-22, 2022-23 and 2023-24 for ensuring payment of interest under Section 50(1) of the GST Act in respect of self-assessed tax paid

after the due date of furnishing of returns.

4.3. It is the case of the petitioner that the advisory also provides that in case of failure to discharge interest liability or to submit sufficient clarification in respect of such liability, recovery action under Section 79 of the GST Act may be initiated by the respondent.

5.1. Learned advocate Mr.Ashutosh Dave for the petitioner submitted that the respondent-Authority could not have issued the advisory as per the provisions of Section 50(1) of the GST Act which provides that if any person who is liable to pay self- assessment tax, then he will be liable to pay interest at the rate of 18% per annum or as may be recommended by the GST Council. It was submitted that without

giving an opportunity of hearing and without considering the submissions of the petitioner, no recovery proceedings could have been contemplated by the respondent-Authority being the impugned advisory.

5.2. It was also pointed out that there is no provision for issuance of the advisory under Section 50(1) of the GST Act and thereto, referring to the provisions of Section 79 of the GST Act to initiate the recovery proceedings.

5.3. It was submitted that on perusal of the advisory, it appears that it only refers to the provisions of Sections 50 and 75(12) of the GST Act read with Rule 88B of the Central/State Goods and Services Tax Rules (for short 'the GST Rules') which provides for

manner of calculating interest on delayed payment of tax.

5.4. In support of his submissions, reliance was placed on the decision of the Hon'ble Jharkhand High Court in case of **Mahadeo Construction Co. Versus Union of India** reported in **[2020] 116 taxmann.com 262 (Jharkhand)** to submit that in the similar facts, Hon'ble Jharkhand High Court has held that without initiation of any adjudication proceedings, no recovery proceedings under Section 79 of the GST Act could be initiated for recovery of interest amount.

5.5. It was therefore submitted that the impugned advisory is liable to be quashed and set aside.

6.1. On the other hand, learned Assistant Government Pleader Ms. Shrunjal Shah for the respondent-Authority submitted that the issuance of the advisory for ensuring payment of interest under Section 50(1) of the GST Act is only to intimate the petitioner with regard to the outstanding interest liability as per the provisions of Section 50(1) of the GST Act which provides for interest on delayed payment.

6.2. It was submitted that as per Section 75(12) of the GST Act, where any amount of self-assessed tax in accordance with the return furnished under Section 39 of the GST Act remains unpaid either wholly or partly or any amount of interest payable on such tax remains unpaid notwithstanding anything contained in Sections 73 and 74 of the GST

Act, the same is to be recovered under the provisions of Section 79 of the GST Act.

6.3. It was further submitted that the newly inserted Rule 142B of the GST Rules with effect from 04.08.2023 provides to issue the intimation for certain amounts liable to be recovered under Section 79 of the GST Act and therefore, without issuance of intimation in Form GST DRC-01D, as referred to in the said Rule, no recovery as contemplated in Section 79(1) of the GST Act can be made by the respondent-Authorities and therefore, merely issuance of advisory by the respondent-Authority after 04.08.2023 would not result into taking any action of recovery as per the mode prescribed in Section 79(1) of the GST Act without issuing the intimation as per Rule 142B of the GST Rules.

6.4. It was submitted that as per Sub-rule (2) of Rule 142B of the GST Rules, the intimation referred to in Form GST DRC-01D is to be treated as a notice for recovery. It was therefore submitted that the petitioner will have an opportunity to file a reply to such notice for recovery and after considering the reply only, the respondent-Authority have to apply the mode of recovery prescribed under Section 79(1) of the GST Act.

6.5. It was therefore submitted that the impugned advisory issued by the respondent-Authority is only to put the petitioner on guard with regard to the proposed recovery proceedings for outstanding liability of payment of interest as computed by the respondent-Authority under Rules 88B and 88C

of the GST Rules.

6.6. It was therefore submitted that no interference may be made at this stage of issuance of advisory by the respondent-Authority as the petitioner is not put to any prejudice but on the contrary, the petitioner is put on guard about the outstanding interest liability as per the provisions of the GST Act and Rules which may be recovered from the petitioner by following the due procedure as per the provisions of Section 75(12) read with Section 79 of the GST Act and Rules 88B, 88C and 142B of the GST Rules.

7. Having heard the learned advocates for the respective parties and having considered the facts of the case, it would be germane to refer to the relevant provisions of the GST

Act and GST Rules so as to examine as to whether the impugned advisory issued under Section 50(1) of the GST Act is required to be interfered with or not, which read as under:

"Section 39: Furnishing of returns:

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed:

Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject

to such conditions and restrictions as may be specified therein.

(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,-

(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or

(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.

Section 50: Interest on delayed payment of tax:

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for

the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen percent, as may be notified by the Government on the recommendations of the Council.

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

Section 75:General provisions relating to determination of tax-

(12) *Notwithstanding anything contained in section 73 or section 74 [or section 74A], where any amount of self-assessed*

tax in accordance with a return furnished under [section 39](#) remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of [section 79](#).

Explanation—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under [section 37](#), but not included in the return furnished under [section 39](#).

Section 79: Recovery of tax:

(3) Where any amount of tax, interest or penalty is payable by a person to the Government under any of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said

tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

Rule 88B: Manner of calculating interest on delayed payment of tax:

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of [section 39](#), except where such return is furnished after commencement of any proceedings under [section 73](#) or [section 74](#) [or section 74A] in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return

beyond the due date, at such rate as may be notified under sub-section (1) of [section 50](#).

(2) In all other cases, where interest is payable in accordance with sub-section (1) of [section 50](#), the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of [section 50](#).

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilised in accordance with sub-section (3) of [section 50](#), the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of

reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of [section 50](#).

Explanation.—For the purposes of this sub-rule, —

(1) input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilisation of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

(2) the date of utilisation of such input tax credit shall be taken to be,

(a) the date, on which the return is due to be furnished under [section 39](#)

or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

Rule 88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return:

(1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in [FORM GSTR-1](#) or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in

accordance with the return for that period furnished by him in **FORM GSTR-3B**, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

(a) pay the differential tax liability, along with interest under **section 50**, through **FORM GST DRC-03**; or

(b) explain the aforesaid difference in tax payable on the common portal, within a period of seven days.

(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either,—

(a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under [section 50](#), through [FORM GST DRC-03](#) and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B, within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason

furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of [section 79](#).

Rule 142B: Intimation of certain amounts liable to be recovered under section 79 of the Act:

(1) Where, in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in FORM GST DRC-01D, directing the person in default to pay the said amount, along with applicable interest, or, as the case may be the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01.

(2) The intimation referred to in sub-rule (1) shall be treated as the notice for recovery.

(3) Where any amount of tax or interest specified in the intimation referred to in sub-rule (1) remains unpaid on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160."

8. On perusal of the above provisions and the Rules, it appears that as per the provisions of Section 39(7) of the GST Act, the petitioner is required to file the return of income by self-assessment and if the petitioner does not pay the interest as per the self-assessment procedure prescribed

under Section 39 of the GST Act, the petitioner is liable to pay the interest as provided under Section 50(1) of the GST Act which provides that any person who is liable to pay tax interest in accordance with the provisions of the GST Act and Rules but fails to pay the tax or any part thereof, then such person is liable to pay the interest on his own at the rate of 18% per annum as may be recommended by the GST Council.

9. The manner in which the interest is to be computed is provided under Rule 88B of the GST Rules for delayed payment of tax, whereas, Section 75(12) of the GST Act provides that notwithstanding anything contained in Sections 73 or 74 of the GST Act, where any amount of self-assessed tax or interest payable on such tax remains unpaid, then the same shall be recovered under the provisions of Section 79

of the GST Act. At the same time, Rule 88C of the GST Rules provides the manner of dealing with difference in liability reported in statement of outward supplies and that reported in return, whereas, Rule 142B of the GST Rules which is inserted by the Central Goods and Services Tax (with an Amendment) Rules, 2023 with effect from 04.08.2023 provides for intimation of certain amounts liable to be recovered under Section 79 of the GST Act which includes the tax or interest which has become recoverable in accordance with Section 75 of the GST Act read with Rule 88C of the GST Rules or otherwise. Therefore, on conjoint reading of the Scheme of the GST Act and the Rules, it appears that the respondent-Authority can recover the amount of interest which has become due as per the provisions of Section 50(1) of the GST Act

read with Rules 88B and 88C of the GST Rules under Section 79(1) of the GST Act only after issuance of intimation in Form GST DRC-01D which will be treated as notice for the recovery as provided under Rule 142B of the GST Rules and without following such procedure, the respondent-Authority cannot make any effective recovery of interest which may become payable by the assessee under the provisions of the GST Act and Rules on self-assessment to be made by such assessee.

10. In such circumstances, it would be germane to refer to the Form GST DRC-01D as prescribed under Rule 142B of the GST Rules, which is reproduces hereunder:

"FORM GST DRC-01D

[See rule 142B]

Intimation for amount recoverable under section 79

Reference No.-

Date-

1. Details of intimation:

(a) Financial year:

(b) Tax period: Form.....To.....

2. Section(s) of the Act or rule(s) under which intimation is issued: <Drop down or check box for [section 75](#) (12) r/w 79 may be provided>

3. Details of tax, interest or any amount payable:
(Amount in Rs.)

Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
From	To								
1	2	3	4	5	6	7	8	9	10
Total									

You are hereby directed to make the payment within seven days failing which proceedings shall be initiated against you to recover the outstanding dues as per the provision of [section 79](#) of the Act.

Signature:.....

Name:.....

Designation:.....

Jurisdiction:.....

Address:.....

To,

GSTIN/ID

Name

Address

Note -

1. Only applicable fields may be filled up."

11. On perusal of the above Form GST DRC-01D,
it is clear that the petitioner is put to

notice to pay the outstanding interest amount as per Section 75(12) of the GST Act within seven days, failing which, the proceedings to be initiated to recover the outstanding dues which may include the outstanding interest as per the provisions of Section 79 of the GST Act which provides for recovery of the dues as per the modes prescribed therein. Therefore, the reference to Section 79 of the GST Act in the impugned advisory is only to put the petitioner on guard as to such outstanding liability as per the record of the respondent-Authority so that the petitioner can either make the payment of such liability if agreed or may oppose the same when the notice in Form GST DRC-01D is received by the petitioner for recovery of such amount as stated hereinabove. Therefore the anxiety of the petitioner that the respondent-Authority will directly apply

the mode of recovery prescribed under Section 79(1) of the GST Act, is without any basis in view of the insertion of Rule 142B in the GST Rules with effect from 04.08.2023 which requires intimation/notice of recovery to the petitioner so as to enable the petitioner to reply the same.

12. We also clarify that after issuance of the notice in Form GST DRC-01D, as per the provisions of Section 75(4) of the GST Act, the respondent-Authority is bound to provide an opportunity to file reply as well as an opportunity of hearing, if requested by the assessee in compliance of the principles of natural justice. Reliance placed by learned advocate Mr.Ashutosh Dave on the decision of ***Mahadeo Construction Co. (Supra)*** would not have bearing inasmuch as it was rendered prior to

amendment and insertion of Rule 142B of the GST Rules and Form DRC-01D. On conjoint reading of Scheme of the Act and the Rules, the Authority can proceed in the manner referred hereinabove.

13. In view of the above, no interference is required to be made at the stage of issuance of advisory by the respondent-Authority as the same is subject to further proceedings as contemplated in Rule 142B of the GST Rules read with Section 79 of the GST Act.

14. The petition is accordingly disposed of. Notice is discharged.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

PALAK J