

C/SCA/10562/2020

ORDER

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 10562 of 2020**

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M/S KALPSUTRA GUJARAT Versus THE UNION OF INDIA

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Appearance:

MR DHAVAL SHAH(2354) for the Petitioner(s) No. 1 for the

Respondent(s) No. 1,2,3,4

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**  
**and HONOURABLE MR. JUSTICE J.B.PARDIWALA**

Date : 04/09/2020

ORAL ORDER

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

Draft amendment allowed. The same shall be carried out at the earliest.

By this writ application under Article 226 of the Constitution of India, the writ applicant, a partnership firm through one of its partners has prayed for the following prayers:

“(A) Your Lordships be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate writ, direction or order, striking down Rule 86A of Central Goods and

Services Tax Rules, 2017, in so far as it gives power to block the Input Tax Credit at no fault of the registered recipient and declare it ultra vires of Section 16 of the CGST Act, 2017.

(B) Your Lordships be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate writ, direction or order, to the respondents to allow petitioner to utilize the Input Tax Credit until it is proved that the supplier did not pay the tax after following up the provision of CGST Rules, 2017;

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(C) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to direct or order to allow the Petitioner to utilize Input Tax Credit of Rs. 3,50,868/- and grant stay against the recovery of Input Tax Credit of Rs. 7,01,735/- vide letter dated 20.03.2020 (Annexure-J);

(D) An ex-parte ad-interim relief in terms of prayer “C” above may kindly be granted;

(E) Any other further relief as may be deemed fit in the facts and circumstances of the case please be granted;”

Having heard Mr. Dhawal Shah, the learned counsel appearing for the writ applicant and having gone through the material on record, for the present, we are inclined to issue notice to the respondents with respect to the reliefs prayed in the draft amendment and paras-8(B) and 8(C) of the main petition.

Let notice be issued to the respondents returnable on 14<sup>th</sup> September 2020. Mr. Dhawal Shah shall furnish one set of his entire paper book including the draft amendment to Mr. Devang Vyas, learned Additional Solicitor General of India. We would like to understand from the respondents whether the omission on the part of the third party (Seller) in filing the GSTR-3B for the relevant period would be sufficient to block the Input Tax Credit of the writ applicant. We would also like to understand whether for such action, the Department has invoked Rule 86A of the Central Goods and Services Tax Rules, 2017.

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(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

DRASHTI K. SHUKLA

