



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 34439 OF 2025

Khusharav Builders Pvt. Ltd. ... Petitioner
versus
Additional Commissioner (A.E.), CGST and C. Ex.,
Mumbai East & Ors. ... Respondents

Mr. Naresh Jain, Ms. Neha Anchlia, Priyanshi Jain for the petitioner.
Mr. Satyaprakash Sharma with Mr. Abhishek Mishra for the respondent.

**CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.**

DATE: 6 January, 2026

P.C.

1. At the outset, Mr. Jain, learned counsel for the petitioner has drawn our attention to an order dated 25 November, 2025 passed by the co-ordinate Bench of this Court in Writ Petition No. 4003 of 2025 (*Arkade Developers Ltd. vs. Central Board of Indirect Taxes and Customs*) to submit that an identical issue is raised in the said petition and the same has been admitted in terms of the said order. The said order is required to be noted, which reads thus:

“1. Heard learned counsel for the parties.

2. Mr. Jain learned counsel for the petitioner submits that petitions involving identical issues have been admitted by this Court. He refers to our order dated 14 December 2024 in Writ Petition No. 18018 of 2024 (Arkade Developers Limited Vs. Union of India and Ors).

3. Accordingly, we issue Rule in this petition and grant interim relief in terms of prayer clause (f), which reads thus:-

“that pending the hearing and final disposal of this petition the Respondents, their successors in office, subordinates, servants, and agents be restrained by an order and injunction of this Hon’ble Court be pleased to stay the operation and from taking any steps pursuant to Impugned

Show Cause Notice dated 01.09.2025 (Being Exhibit "D" annexed hereto) and Impugned rectified show cause notice dated 18.09.2025 (Being Exhibit "F" annexed hereto) issued by the Respondent No. 2 under the provisions of the Act."

4. In our order of 14 December 2024, we had granted similar interim relief, subject to the petitioner therein depositing about 10% of the demanded amount, which is what the petitioner would have had to deposit if the petitioner had instituted an appeal against the order.

5. However, Mr Jain pointed out that our direction for deposit was stayed by the Hon'ble Supreme Court vide order dated 20 January 2025.

6. Therefore, we have granted this interim relief without requiring a deposit. However, depending upon the outcome of Special Leave Petition (C) No. 1018 of 2025, the respondents are granted liberty to apply for variation. Mr. Jain states that he will immediately place on record the outcome of Special Leave Petition (c) No. 1018 of 2025.

7. Ms. Chavan appears and waives service on behalf of Respondent Nos. 2 and 3. She states that a reply will be filed by the respondent whom she represents within eight weeks from today, after serving an advance copy to the learned counsel for the petitioner.

8. The petitioner to take steps to serve the remaining respondents and file an affidavit of service. If the remaining respondents wish to file any reply, they are also granted eight weeks' time from the date of service. An advance copy of the reply will have to be served upon learned counsel for the petitioner."

2. Our attention is also drawn to an order dated 14 December, 2024 passed by the co-ordinate Bench of this Court in Writ Petition No. 18018 of 2024, in which the Court while admitting the petition had directed to deposit Rs.2.10 crores in this Court, subject to which ad-interim relief was granted. The reasons for such deposit was set out in paragraphs 3 and 4 of the said order, which reads thus:

3. Accordingly, we issue Rule in this petition and grant ad-interim relief in terms of prayer clause (h) subject to the petitioner depositing an amount of Rs.2.10 Crores in this Court within 6 weeks from today. If this amount is not deposited within 6 weeks from today then ad-interim relief granted by us will stand vacated without further reference to this Court.

4. We have determined the above deposit amount based on the premise that the tax demanded by the impugned order was in the range of Rs.24 Crores. After that however, the petitioner applied for rectification and this demand is now reduced to approximately Rs.21 Crores. If the petitioner was to avail of the appeal remedy then the petitioner would have to deposit 10

percent of this demanded amount which comes to approximately Rs. 2.10 Crores.”

3. Mr. Jain has also drawn our attention to the decision of the Gujarat High Court in **Munjaal Manishbhai Bhatt vs. Union of India**¹ to submit that the basis of the show cause notice in the present case, namely, Notification No. 11/2017 - Central Tax (Rate) in regard to paragraph 2 has been held to be ultra vires. The conclusions of the Court are required to be noted, which reads thus:

“122. In the result, the impugned Paragraph 2 of the Notification No.11/2017 -Central Tax (Rate) dated 28-6-2017 and identical notification under the Gujarat Goods and Services Tax Act, 2017, which provide for a mandatory fixed rate of deduction of 1/3rd of total consideration towards the value of land is ultra-vires the provisions as well as the scheme of the GST Acts. Application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India.

123. While we so conclude, the question is whether the impugned paragraph 2 needs to be struck down or the same can be saved by reading it down. In our considered view, while maintaining the mandatory deduction of 1/3rd for value of land is not sustainable in cases where the value of land is clearly ascertainable or where the value of construction service can be derived with the aid of valuation rules, such deduction can be permitted at the option of a taxable person particularly in cases where the value of land or undivided share of land is not ascertainable.

124. The impugned paragraph 2 of Notification No.11/2017 -Central Tax (Rate) dated 28th June 2017 and the parallel State tax Notification is read down to the effect that the deeming fiction of 1/3rd will not be mandatory in nature. It will only be available at the option of the taxable person in cases where the actual value of land or undivided share in land is not ascertainable.”

4. We are also informed by Mr. Jain that the Delhi High Court has taken a similar view in **Sanjeev Sharma vs. Union of India & Ors**²

5. It is next contended that the decision of the Gujarat High Court in **Munjaal Manishbhai Bhatt vs. Union of India** (supra) is assailed by the respondent in the Supreme Court in the proceedings of Petition for Special Leave to Appeal (C) No.

1 [2022] 138 taxmann.com 117 (Gujarat)

2 W.P.(C) 5055/2018 & CM APPL. 19455/2018 dated 18.08.2023.

21703 of 2022, on which, an order dated 1 October, 2024 was passed by the Supreme Court. The said order is required to be noted, which reads thus:

"It is stated at the bar by learned senior counsel for the respective parties that the respective parties that the Notification impugned before the High Court have been stuck down by the Delhi High Court also following the Gujarat High Court's judgment. However, demands are being made on the basis of the said Notification throughout the country.

In the circumstances, pending consideration of these petitions, there shall be no coercive steps nor any adjudication of any show-cause notice that may have been issued to the respondents-assesseees on the basis of the impugned Notification until further orders.

Further the directions of the High Court for refund shall be complied with by the appellant-Union of India. The refund shall be made within a period of four weeks from today. This is, however, subject to the result of these petitions.

Learned counsel Mr. Sanjeev Sharma for the respondent no. 4 in Diary No(s). 25034/2024 submitted that he has instructions to appear for the said respondent. Let Memo of Appearance or Vakalatnama be filed accordingly."

6. Thus, we find that the interim order passed by this Court in Writ Petition No. 18018 of 2024 in relation to pre-deposit was assailed by the petitioner before the Supreme Court in Petition for Special Leave to Appeal No. 1018 of 2025, on which the Supreme Court by an order dated 20 January, 2025 has stayed the order passed by the co-ordinate Bench of this Court dated 14 December, 2024 (supra) directing the petitioner therein (Arkade Developers Ltd.) to deposit the requisite amount.

7. On the aforesaid backdrop, apart from the other issues on legality of the impugned show cause notice dated 29 September, 2025 issued by respondent no. 1 under Section 74 of the CGST/MGST Act, the primary question which would arise for consideration in view of the decision(s) as rendered by the Gujarat High Court as also by the Delhi High Court in the context of Notification No. 11/2017 dated 28 June, 2017, whether at all there was jurisdiction to issue the impugned show

cause notice, more particularly when paragraph 2 of the said notification has been held to be ultra vires or illegal. This more particularly applying the principles of law that being a central circular under the Central Legislation, the decision of the Supreme Court in **M/s. Kusum Ingots & Alloys Ltd vs. Union Of India & Anr.**³ on the pan-India applicability of the Notification No.11/2017 dated 28 June, 2017 and the law as laid down by the Supreme Court in the said decision in such context. This would be the basic jurisdictional issue which would arise for consideration.

8. We, accordingly, direct the respondents to file a reply affidavit on the preliminary issue as to whether considering the legal position, respondent no. 1 can be said to have jurisdiction to issue impugned show cause notice. Let such reply affidavit be filed within two weeks from today and copy of the same be furnished to the advocate for the petitioner two days prior to the adjourned date of hearing.

9. List the proceedings on **20 January, 2026 (H.O.B.)**.

10. In the meantime, no further action under the impugned show cause notice shall be taken.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)