IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 10638 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI sd/-

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Approved for Reporting	Yes	No
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RAGHUVIR DEVELOPERS AND BUILDERS (THROUGH PARTNER GORDHANBHAI RANCHHODBHAI ASODARIA)
Versus
ASSISTANT COMMISSIONER, CGST AND CE, DIVISION-II, SURAT

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Appearance:
MR ABHAY Y DESAI(12861) for the Petitioner(s) No. 1
MS HARDIKA VYAS(11450) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 20/08/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Since a short issue is involved, the matter is taken up for final hearing.

2. By way of present writ petition, the petitioner being a partnership firm engaged in the business of providing construction services has assailed the impugned order dated 30.03.2026 passed by the respondent under the provision of Section 74(9) of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act'), raising the demand of tax and penalty of Rs.47,87,271/- [Rs.8,54,870/- + Rs.39,32,401/-] along with interest.

FACTS OF THE CASE

3. Pursuant to the intelligence gathered by the Surat Commissionerate, CGST, the petitioner was called upon the pay

the tax amounting to Rs.8,54,870/- along with interest and penalty in FORM GST DRC-01A under Section 74(5) of the CGST Act, alleging that the petitioner had supplied the excavated soil worth Rs. 1,70,97,395/- in exchange of service from the service provider, without issuing tax invoices and chargeable to GST on such barter supply. Subsequently, the Show Cause Notice dated 27.06.2025 was issued by the Assistant Commissioner (Anti Evasion), under Section 74(1) of the CGST Act, seeking to recover the aforesaid amount. The petitioner submitted the detailed written submissions on 26.12.2025 denying the allegations referred in the Show Cause Notice and submitted that the petitioner had already paid the GST at the rate of 5% on value of the excavated soil. The respondent thereafter passed the impugned Order-in-Original under Section 74 of the CGST Act confirming the demand of tax of Rs.8,54,870/- along with applicable interest and penalty, amounting to total sum of Rs.47,87,271/- along with interest. Hence, the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. At the outset, learned advocate Mr. Desai appearing for the petitioner has submitted that the impugned Show Cause Notice as well as subsequent order are required to be quashed and set aside, since the respondent authority is not sure whether the provision of Rule 27 or Rule 28 of the Central Goods and Services Tax Rules, 2017 (for short 'the CGST Rules') are required to be invoked. In this regard, it is submitted that the Show Cause Notice dated 27.06.2025 was issued by invoking the provision of 28(1)(a) of the CGST Rules, for determining the value of excavated soil and accordingly, the demand of tax along with

interest and penalty was raised. It is submitted that the adjudicating authority in the impugned order has admitted that Rule 28(a) of the CGST Rules was incorrectly invoked in the case of the petitioner. However, the respondent authority, simultaneously, invoked Rule 27(c) of the CGST Rules and confirmed the demand by resorting to a completely new and different valuation for determining the valuation of the services. It is submitted that the adjudicating authority has not offered any opportunity of hearing to the petitioner as to how Rule 27(c) of the CGST Rules, would get attracted in the case of the petitioner. Thus, it is urged that the impugned Show Cause Notice as well as the order are required to be quashed and set aside as both runs contrary to each other.

<u>SUBMISSIONS ON BEHALF OF THE RESPONDENT</u>

5. Learned Senior Standing Counsel Ms. Hardika Vyas is unable to controvert the above factual aspect with regard to invocation of different provisions in the Show Cause Notice as well as in the adjudication order. However, she has submitted that the entire excavated soil was utilised in the project itself as admitted by the petitioner in the reply dated 13.03.2026.

<u>ANALYSIS & OPINION</u>

6. We have heard the rival submissions of the respective parties. The fact about invocation of different provision in the CGST Rules in the Show Cause Notice as well as in the impugned order passed by the adjudicating authority is not in dispute. The petitioner was issued the impugned Show Cause Notice dated 27.06.2025 by invoking the provision of Rule 28(a) of the CGST Rules, for determination of value of the excavated

soil and which had resulted into demand of tax of Rs.47,87,271/- along with interest and penalty. The petitioner filed its reply to the Show Cause Notice pointing out that the said provisions of Rule 28(a) of the CGST Rules would not apply in the case of the petitioner and the valuation prescribed under the said Rule on the basis of open market value was without any legal basis. As the Show Cause Notice failed to allege or even indicate that the alleged supply of soil to any "*related persons*".

7. The respondent adjudicating authority in paragraph no.4.3 of the impugned order dated 30.03.2026/31.03.2026 has admitted that Rule 28(a) of CGST Rules as mentioned in the Show Cause Notice is incorrectly invoked. However, simultaneously the adjudicating authority invoked Rule 27(c) of the CGST Rules and confirmed the demand by resorting to a different valuation for determination of value of services. Thus, the impugned order passed by the adjudicating authority does not approve the Rule 28(a) of the CGST Rules, which was invoked in the Show Cause Notice. Moreover, the petitioner was never offered any opportunity to meet with the determination of value under Rule 27(c) of the CGST Rules, which was invoked and relied upon by the adjudicating authority. Hence, on this count alone the impugned Show Cause Notice is required to be quashed and set aside since the petitioner has suffered a grave prejudice. We also quash and set aside the initial show cause notice dated 27.06.2025, since, the adjudicating authority has opined that the provision of Rule 28(a) of the CGST Rules was incorrectly invoked.

8. Accordingly, the present writ petition ***succeeds***. The impugned order as well as Show Cause Notice are hereby

quashed and set aside. It will be open for the Revenue to initiate fresh proceedings by issuing a fresh Show Cause Notice to the petitioner.

sd/-
(A. S. SUPEHIA, J)

sd/-
(VAIBHAVI D. NANAVATI,J)

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