



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CIVIL APPLICATION NO. 8399 of 2026**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

**and**

**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

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Approved for Reporting	Yes	No
	✓	

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HIRENKUMAR VALJIBHAI SANKHALAVA

Versus

OFFICE OF DEPUTY COMMISSIONER OF STATE TAX

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Appearance:

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

MS TANUSHREE SHRIMAL, AGP 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 : 25/06/2026**

**ORAL JUDGMENT**

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

1. The matter was heard in the first half. Since we were not inclined to entertain the writ petition on the ground of alternative efficacious remedy of filing an appeal under Section 107 of the Gujarat Goods and Services Tax Act, 2017 (for short 'the Act'), on the request of learned advocate Mr.Ashutosh Dave the matter was listed in second session. Learned advocate, Mr.Ashutosh Dave, on instructions of the petitioner,



has submitted that the petitioner would like to invite the order on merits instead of availing the statutory alternative remedy of filing an appeal against the impugned order.

2. The petitioner along with other persons viz. Gauriben Sankhalva, Shilpaben Sankhalva, Sanjaybhai Sankhalva, Valjibhai Sankhalva and Sankhalva are managing a coaching institute in the name of "Alpha-1 Tuition Classes and Hostel", which provides the coaching services to students studying in 4<sup>th</sup> and 5<sup>th</sup> grade in Gujarati Medium.

2.1 A search was undertaken by the GST authorities at the premises of the petitioner on 06.10.2023 under the provision of Section 67(2) of the Act after taking authorization of the Joint Commissioner of State Tax-10, Rajkot. The said search continued till 10.10.2023 and the respondent authorities seized various documents under the process and also recorded the statements of the petitioner. Necessary panchnamas were also drawn. A categorical statement is made in writ petition in paragraph No.3.2 to the extent that after the panchnama was drawn in presence of the panchas, recording that the petitioner had agreed to pay tax, however, some time was sought in order to make the arrangement of the funds. It is alleged by the petitioner that the petitioner was compelled to make the payment of tax, interest and penalty under duress and threat that too without any adjudication for Financial Year (for short 'F.Y.') 2018-19 to F.Y. 2023-24. Accordingly, a collective amount was paid by the petitioner of Rs.1,96,25,330/-.

2.2 It is the case of the petitioner that such amount was paid



under the protest, which forms part of form GST DRC 03. Nothing happened for a period of almost 2 years. Thereafter, the petitioner woke up from slumber and preferred an application in form GST RFD 01 under Section 54(1) of the Act on 28.08.2025 under the category of 'any other' seeking the refund of the amount tax, interest and penalty.

2.3 It appears that thereafter, the respondent issued an order Form DRC 04 on 19.11.2025 acknowledging voluntary payment and ultimately, the claim of the petitioner was rejected by the impugned order dated 03.02.2026 in form GST RFD 06. These proceedings were undertaken after the petitioner was issued show cause notice dated 06.01.2026 and upon filing of the reply dated 30.01.2026.

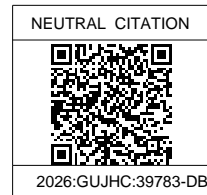
3. It is contended by the learned advocate appearing for the petitioner that the impugned action of the respondent is required to be quashed and set aside since the order under DRC 04 was issued on 19.11.2025, after almost 2 years of payment/confirming that the amount deposited is still lying with the Government. In this regard, reliance is placed on the judgment of the Calcutta High Court in the case of Suraj Mangar Vs. Assistant Commissioner of West Bengal State Tax, [2025] 176 taxmann.com 951 (Calcutta). It is submitted that the tax was coercively and under threat recovered from the petitioner and hence, the entire action is illegal. In support of his submission, reliance is placed on the Supreme Court judgment in the case of Radhika Agarwal Vs. Union of India, [2025] 171 taxmann.com 832(SC). Reliance is also placed on the judgment of the learned Single Judge of the Karnataka High



Court in the case of *Gunnam Infra Projects (P.) Ltd. Vs. Union of India*, [2025] 180 taxmann.com 492 (Karnataka). Thus, it is submitted that the payment of the tax as referred in DRC 03 is not voluntary in nature but, coercive recovery made during the course of the search. It is also submitted that the respondents have illegally rejected the application filed for the refund without issuing any notice either under Section 73 or 74 of the Act. It is also submitted that the petitioner pays the tax regularly and hence, on the basis of overall documentary evidences which are produced on record, the recovery of the tax is coercive, under threat and subsequent rejection of the refund application is also *de hors* the statute. Thus, it is urged that the action of the respondent may be set aside.

3.1 It is submitted that a temporary registration was also issued in the name of the petitioner however, no notice was given before opening such temporary registration for coercive payment of the tax. He has also referred to the Circular dated 18.11.2019 and urged that the proceedings against the petitioner has been conducted *de hors* the guidelines issued in the said Circular.

4. Vehemently opposing the present writ petition, learned Assistant Government Pleader has submitted that the writ petition is ill-conceived as vague allegation of coercive recovery is alleged. It is contended that and since the petitioner is having an efficacious alternative remedy of filing an appeal under Section 107 of the Act, the same may be rejected. She has pointed out the record of such proceedings which consists of various panchnamas. She has referred that



during the search and after the search was completed, the respondent authority – State Tax Officer along with the panchas who have recorded the statements of the petitioner and other employees, would reveal that the tax amount was in fact voluntarily paid. It is submitted that at the end of the search, the proceedings were recorded in question and answer form in which, the petitioner has admitted while answering to the question No.15 that he is not having any GST registration and since his services gets included within the statutory provisions of 18% and looking to the turnover, he is required to pay the tax. Ultimately, he agreed to pay such amount and accordingly, a temporary registration was issued to him for paying the tax and penalty amount.

4.1 Learned AGP has submitted that after the amount was voluntarily paid by the petitioner, for the first time, after delay of almost two years, he filed an application dated 28.08.2025 in form of GST RFD 01 seeking refund of the tax of Rs.1,12,74,296/- plus interest at Rs.66,59,890/- plus penalty at Rs.16,91,144/-. In response, the respondent issued a show cause notice to the petitioner in form GST RFD 08 which the petitioner replied in form GST RFD 09 and after granting personal hearing on 16.01.2026, the impugned order dated 03.02.2026 was passed. She has submitted that prior to that the petitioner was issued form DRC 04 on 19.11.2025. It is submitted that in fact the entire case of the petitioner is premised on coercive recovery, which is required to be disbelieved in view of the panchnamas drawn by the GST authorities during the search. It is contended that the



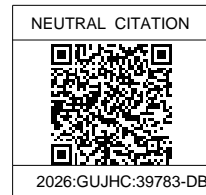
petitioner never raised any objection or complaint about the threat or coercive recovery before any authority and hence, there appears to be afterthought to claim the refund after almost 2 years of depositing the same by filing the refund application and obtaining the orders of rejecting the same. In support of her submissions, she has placed reliance on the judgment of the Bombay High Court in the case of *Innovators Facade Systems Ltd. Vs. Assistant Additional Director General of GST Investigation, [2024] 160 taxmann.com 747 (Bombay)*. Thus, it is urged that writ petition may not be entertained.

5. The facts which are established from the records are as under:

5.1 The petitioner along with other persons is running a coaching institute in the name and style of "Alpha-1 Tuition Classes and Hostel".

5.2 The premises of the institute was searched by the GST authorities from 06.10.2023 till 10.10.2023 under the provision of Section 67(2) of the Act. Various documents were seized and statements were also recorded by drawing the panchnamas during this period.

5.3 We have extensively perused the contents of the panchnama. The contents of the search proceedings reveal that the petitioner has voluntarily agreed to pay the tax amount since no GST registration was obtained, and the institution was being run *sans* registration number. In the panchnama recorded on 10.10.2023, the following statement is recorded, which is translated as under:



*“During the search proceedings, the trader has given a written undertaking. The trader is not registered (URO) under the GST and during the search proceedings, in order to pay the tax liability, he has consented to issue a “temporary number”.*

Thus, it appears on an undertaking given by the petitioner, a temporary GST number was issued for payment of tax.

5.4 At the end of the search proceedings , the respondent authorities along with the panchas, have prepared an order containing questionnaire by referring to various provisions of the Act more particularly, Section 70 of the Act. The relevant questions and answer to the same are translated as under:

*“Question No.3: On scrutiny of the account papers, you are entitled to have a GST number and hence, are you having the GST number?.*

*Answer: ‘No, he does not have any such registration number’.*

*Question No.10 : On verification of accounts Alpha Classes, Ms.AlfA Tuition Classes amd along with other four branches, it is noticed that for year 2017-18, 377 students, for 2019-2020-393 students, for 2020-2021-311 students, for 2021-2022-354 students, for 2022-2023-459 students, thus total 1000 students are shown. What do you have to state?*

*Answer: I agree with the number of students as mentioned by you in the present premises, moreover as*



*stated herein above in the question, the aforesaid number of students have taken the coaching.*

*Question No.13: Have your collected fees from the students for 2018-19 till today @Rs.30,000/- and more than Rs.30,000/- for the years 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24.*

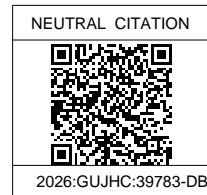
*Answer: Though I have collected an amount of Rs.35,000/- for the year 2019-20, they have issued the receipt of Rs.30,000/- only and Rs.5000/- has been taken in cash.*

5.5 Similarly for the rest of the years, though they have collected fees of Rs.35,000/-, they have given the receipt of Rs.30,000/- only.

5.6. In question No.14, he has admitted that they have not shown the amount of cash in their account books.

5.7. In response to Question No.15, regarding paying the tax amount of Rs.1,84,74,300/- along with interest of Rs.69,04,186/- as well as penalty of Rs.27,71,145/-, he has positively responded to the same and has categorically made a statement that he is ready to pay the amount.

*“Question No.18: At present, at the end of ongoing investigation, a temporary registration has been issued to you by us to deposit the raised demand; therefore now, when will you apply for obtaining a regular GST registration number?”*



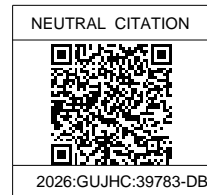
*Answer: Upon deposit of the demand raised at the end of the said investigation by me, I shall apply to obtain a regular GST registration number.”*

5.8 Finally, at the end the competent authority has recorded thus:

*“Thus, I state and record the aforementioned statement in a fully conscious state, in a non-intoxicated condition, and without succumbing to any kind of pressure, coercion, threat, or intimidation; thereafter, all the answers to the aforementioned question numbers 1 to 18 are exactly as stated by me and are true and correct to the best of my knowledge, and furthermore, during the course of all these proceedings, none of my social or religious sentiments have been hurt, nor has any financial loss been caused to me. In exchange whereof, I affix my signatures on all pages of this statement.”*

5.9 Thus, from the tenor of the proceedings and panchnamas, we do not find any semblance of coercive recovery or threat issued to the petitioner. It is evident that the petitioner voluntarily discharged the outstanding tax liability, given that he lacked registration under the GST, and collected fees, partly in cash.

6. Keeping these facts in mind, we cannot ignore the subsequent conduct of the petitioner. On 10.10.2023, when the proceedings got over, and he paid the tax, after about 2 years, he woke from the slumber and filed an application seeking refund on 28.08.2025 in form GST RFD 01 claiming refund of tax of Rs.1,12,74,296/- plus interest at Rs.66,59,890/- plus penalty at Rs.16,91,144/-. For 2 years, the petitioner did not complain about the threat/coercion given by the GST



authorities to any superiors or any police authorities. Thus, the submission made on behalf of the petitioner about coercive recovery, is nothing but an afterthought to claim the refund of the tax, which he had voluntarily paid.

7. At this stage, we may refer to the decision of the Bombay High Court in the case of *Innovators Facade Systems Ltd. Vs. Assistant Additional Director General of GST Investigation, [2024] 160 taxmann.com 747 (Bombay)*, wherein, the Bombay High Court dealing with the issue of coercive recovery has held thus:

*“7. In our opinion, in reality or genuinely if the petitioner was to be coerced, as a prudent legal person would resort, the petitioner could have made complaints and/or representation on such actions of the officers, which in law can certainly be regarded as highhanded and illegal. However, the petitioner did not even whisper anything of such kind, in the several letters addressed to the authorities including in answering the summons, to say that such amount was recovered by the department under coercion, much less to raise the same before the appropriate police authorities. Hence, a case of such nature being directly made out in the writ petition de hors any material to that effect would not give any impetus to the petitioner's case of any coercion by the department. In this view of the matter, such factual dispute as to whether any coercive methods were adopted by the respondents and that such amounts were deposited under duress and coercion certainly cannot be conclusively ascertained and/or gone into in the proceedings of a writ petition under Article 226 of the Constitution.*

8. The Court cannot be oblivious that there are several cases where the assessee is conscious and is aware that there are substantial taxes due and payable by the assessee and/or there is substantial recovery from the assessee, in such circumstances, like in the present case after search and seizure action was initiated, to buy peace, the assessee may voluntarily deposit the amounts. It is hence not unlikely that the assessee, to mitigate the circumstances and/or avoid legal



*proceedings being initiated against it, voluntarily deposited the tax amounts. Such position being taken by the assessee is not unknown to the tax jurisprudence. Thus, any such amount voluntarily deposited, in such circumstances, cannot be categorized as a deposit under coercion. In this regard, there cannot be a straight jacket and/or a blanket opinion which could, at all, be rendered by the Court as any action taken by the department is required to be tested on its own facts.*

11. *At this stage, nonetheless, learned Counsel for the petitioner submits that similar issue was raised before the Madras High Court in the case Shri. Nandhi Dhall Mills India (P.) Ltd. v. Senior Intelligence Officer, Director General of Goods & Service Tax, Trichy [2021] 127 taxmann.com 31/86 GST 649 (Madras). We find that the Court in such decision was not confronted with the facts as in the present proceedings and more particularly, the assessee taking a position of addressing such letter (dated 13 October 2022 (supra)), as addressed by the petitioner to the respondents, which was never withdrawn. Our observations in regard to non-applicability of the decision are fortified from reading of paragraph 27 of the said decision. We thus find that such judgment is certainly not applicable in the facts of the present proceedings.*

13. *We may also observe that when an assessee comes before the Court invoking jurisdiction under Article 226 of the Constitution and that too making a serious grievance that the department had coerced the assessee to deposit the tax amounts, certainly as to whether it is genuinely a coercion or whether it was a voluntary deposit, as seen in the present case, is purely a disputed question of fact. Such question cannot be gone into and appreciated in the proceedings under Article 226 of the Constitution. In fact, in such circumstances, a tax already being deposited and a relief of refund thereof being sought in considering grant of such relief in the proceedings under Article 226 of the Constitution and that too for refund of money, would amount to the Court converting proceedings of a writ petition into proceedings akin to a proceeding of a civil suit, as necessarily it would require appreciation of evidence. Considering the settled principles of law as laid down in catena of decisions, such exercise is not possible to be undertaken in the summary, discretionary proceedings under Article 226 of the Constitution, albeit in a given case, the Court may chose to exercise its discretion, in the event, facts are absolutely glaring and gross that a reasonable body of persons cannot resort to a highhanded*



*and illegal action.”*

8. We adopt the view expressed by the Bombay High Court, wherein the High Court has examined the allegations of coercive recovery levelled by the tax payer. It is held that if the tax payer was genuinely coerced, as a prudent legal person, would have resorted to filing of complaints or representation on such officers, who have shown highhandedness, and since he had not done so the allegation of coercive recovery cannot be believed. It is also held that the factual dispute as to whether any coercive methods were adopted by the respondents and that such amounts were deposited under duress and coercion certainly cannot be conclusively ascertained and/or gone into in the proceedings of a writ petition under Article 226 of the Constitution.

9. So far as the belated passing of order of form GST DRC 04 is concerned, we may at this stage refer to the provision of Section 74(8) of the Act, which reads as under:

***“74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.***

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*(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.”*

10. The provisions of sub-section (8) explicate that where any person chargeable with tax, pays the said tax with interest



payable under Section 50 of the Act and penalty, all the proceedings in respect of the said notice shall be deemed to be concluded. In the present case, the petitioner had voluntarily paid all the tax amount along with penalty as he was caught red-handed by the GST authorities, operating the institution collecting the fees in cash without any GST registration. The proceedings, thus, concluded on 10.10.2023 when tax liability was satisfied voluntarily. Thereafter, FORM DRC 04 was issued on 19.11.2025. The issuance of FORM DRC 04 under Rule 142 of GST rules, is an acknowledgment of voluntary payment of outstanding tax liability. There is no specific time limit provided under the Rules for issuance of DRC 04. In wake of the fact that the petitioner had accepted his tax liability voluntarily, no prejudice has been caused to the petitioner on issuance of FORM DRC 04 on 19.11.2025, since there was no dispute either raised by the petitioner or the department had taken any action disputing the tax liability for a span of almost two years. The proceedings got concluded on 10.10.2023, after the petitioner deposited the amount on his request to open the temporary GST registration number. Thus, the conduct of the petitioner during the search proceedings, which went for 06.10.2023 till 10.10.2023, and subsequently demonstrates that he has alleged coercive recovery of tax by the GST Officials as an afterthought in order to claim refund. Hence, the respondents were constrained to issue notice in FORM GST RFD-08 under Rule 92(3) of the GST Rules for rejection of refund application. Ultimately, after giving ample opportunity of hearing to the petitioner, his application was rejected vide order dated 03.02.2026 in FORM GST RFD-06.



11. We may at this stage refer to the provision of Section 54 contained in Chapter – XI of the Act, which governs the refund of the tax. The petitioner has filed the application GST RFD-01 under Section 54 of the Act on 28.08.2025. The relevant provision of Section 54 is incorporated as under:

***“SECTION 54 : Refund of tax***

*(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:*

*Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.”*

The provision of Section 54 of the Act will only come into play, if it is established that the amount of tax was either not payable or it was paid in excess. The petitioner has to establish the eligibility of refund under Section 54 of the Act read with Rule 89 and Rule 92 of GST Rules. In the present case, on the request and undertaking given by the petitioner, the petitioner has voluntarily deposited the quantified tax liability after he was issued a temporary registration number. The tax and penalty have been quantified on the basis of the data examined from the material found during the search. The authorities have calculated the number of students from the documents and the fees collected by them both in cheque and cash. Hence, we do not find any illegality in the impugned order dated 03.02.2026. Reliance placed on the Circular dated 18.11.2019, by the petitioner will not come to his rescue in



wake of the present facts. The said Circular has been issued by the Central Board of Indirect Taxes and Customs regulating the process of filing and processing the applications for refund electronically. Similarly, the case laws cited by the petitioner is also an exercise in futility. In the case of ***Gunnam Infra Projects (supra)***, the Karnataka High Court has examined the recovery of taxes from a registered tax payer by way of coercion, since the record did not disclose that the amount paid was voluntarily. The facts of the case also suggest that there was no quantification of the amount since the material was seized. In the present case, the search has taken place from 06.10.2023 to 10.10.2023. All the materials were examined in presence of petitioner and panchas. The petitioner has accepted the number of students and the quantum of fees collected from the students. The exact number of students for each year has also been disclosed from the material found during the search. Reliance placed on the decision of Apex Court in the case of ***Radhika Agarwal(supra)*** is also ill-conceived since the same deals with powers of arrest by the Customs officer under section 104 of the Customs Act, 1962. In the case of ***Suraj Mangar(supra)***, the Calcutta High Court while examining the case of a registered dealer whose refund application was rejected by doubting his business premises, though he was exporting his goods after being granted GST registration from the same premises has held that time limit of 60 days in processing the refund under of Section 54(7) of the Act is mandatory. Thus, the decisions on which reliance is placed by learned advocate appearing for the petitioner will not remotely



apply to the facts of the instant case.

12. Hence, the writ petition fails and the same is hereby ***rejected***. The petitioner has invited the order on merits though he was asked to avail the alternative efficacious remedy of filing an appeal under Section 107 of the Act.

**(A. S. SUPEHIA, J)**

**(VAIBHAVI D. NANAVATI, J)**

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