

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

**R/SPECIAL CIVIL APPLICATION NO.7183 of 2025**

**FOR APPROVAL AND SIGNATURE:**  
**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

**and**  
**HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Approved for Reporting	Yes	No

GATEWAY EXIM

Versus

STATE OF GUJARAT THROUGH COMMISSIONER OF STATE TAX & ORS.

Appearance:

PRIYANK P LODHA(7852) for the Petitioner(s) No. 1

MS SHRUNJAL Shah, AGP for the Respondent(s) No. 1,2,3

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

and

**HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

**Date : 03/12/2025**

**ORAL JUDGMENT**

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

1. **RULE.** Learned AGP Ms.Shrunjal Shah waives service of notice of rule on behalf of the respondents.

2. A short issue is involved in the writ petition and therefore, the same is taken up for final disposal.

3. Learned advocate Mr.Priyank Lodha appearing for the petitioner, at the outset, while referring to the provision of Section 75(4) of the Gujarat Goods and Service Tax Act 2017, has submitted that after issuance of notice in the

Form GST DRC 01, the respondent-officer did not intimate the date, place and time of personal hearing and had passed the impugned Order-in-Original dated 28.08.2024, and hence is required to be quashed and set aside along with subsequent order passed by the appellate authority dated 06.03.2025. While pointing out documents on record, more particularly, DRC 01 (Pages 31 – 32), it is submitted that details about personal hearing i.e. date, time and venue are required to be specified by the respondents in the portal which they did not specify, hence the petitioner was unable to upload necessary documents and was also unable to provide explanation to the show cause notice. Thus, it is submitted that for want of details as mentioned in DRC 01, there is gross violation of principles of natural justice and no personal hearing was given by the Adjudicating Authority while passing the Order-in-Original.

4. It is urged that if the writ petition is allowed on the short ground, other contentions which are raised in the writ petition may be kept open and the respondent authorities may be directed to consider the same while giving an opportunity of personal hearing.

5. In response to the aforesaid submissions, learned AGP Ms.Shrunjal Shah, at the outset, while pointing out the screenshot of the portal and also the notings, has submitted that in fact, despite having granted sufficient opportunity to

the petitioner on three occasions, the petitioner did not come forward for submitting the supporting documents and was also demanding personal hearing by intimating the date of personal hearing, hence, the authorities were constrained to pass the orders.

6. She has submitted that in fact, once the proceedings are notified in the portal, the assessee has to verify subsequent dates as well as the notings and the respondent Assessing Officer is not required to issue separate Show Cause Notice intimating the date of personal hearing. Thus, it is urged that the writ petition may not be entertained.

7. We have heard learned advocates for the respective parties. The aforementioned facts establish the fact about the issuance of notice under DRC 01 to the petitioner on 21.5.2024 which is not in dispute. We have perused the contents of Show Cause Notice in the format of DRC 01 and the details of the proceedings which are to be filled in are incorporated as under.

Details of personal hearing and due date to file reply.

Sr.No.	Description	Particulars
1	Date by which reply has to be submitted	21-06-2024
2	Date of personal hearing	NA
3	Time of personal hearing	NA
4	Venue where personal hearing will be held	NA

Thus, the respondents while issuing the notice GST DRC 01 in fact have incorporated the aforesaid details of personal hearing which are required to be intimated which includes the date by which the reply has to be submitted i.e. 21.6.2024, date of personal hearing, time of personal hearing and venue where personal hearing will be held. Except the date of reply, the details of other three heads are missing.

8. It appears that thereafter on the portal, the status of proceedings was intimated and screenshot of the portal reflects about the details of show cause notice of DRC 01, reminder issued on 03.07.2024 and adjournment was on 24.08.2024 and time to file reply was 27.08.2024. Along with the aforesaid details in the portal, the note was also displayed which is as under.

“You have not submitted detailed reply and supporting documents if you want to submit documents or want personal hearing you may come on given address or submit documents online otherwise further action will be taken. This is the last adjournment otherwise drc 07 will be generated due to lack of evidence without further notice.”

9. A bare perusal of the note would indicate that in fact, the petitioner has not been conveyed about the date, time and venue of personal hearing as mentioned hereinabove. Though, we may at this stage mention that at the time of

issuing DRC 01, it would not be mandatory to incorporate the date, time and venue of personal hearing, since it would depend upon the reply filed by the assessee, and also subsequent progress of the proceedings. However, during the ongoing proceedings, subsequently, in the portal before passing any adverse order against the petitioner or assessee, the date, time and venue of personal hearing are required to be specified. It is not in dispute that three opportunities are required to be given and as per provisions of section 75(5), three adjournments are required to be given. Section 75 reads as under.

**“Section 75. General provisions relating to determination of tax.-**

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74 [or sub-sections (2) and (7) of section 74A], as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

[(2A) Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty under clause (ii) of sub-section (5) of section 74A is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the penalty shall be payable by such person, under clause (i) of sub-section (5) of section 74A.]

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

[(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within the period specified in sub-section (10) of section 73 or in sub-section (10) of section 74 or in sub-section (7) of section 74A.]

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority

and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in subsection (10) of section 73 or sub-section (10) of section 74 [or sub-sections (2) and (7) of section 74A] where proceedings are initiated by way of issue of a show cause notice under the said sections.

(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.]

(13) Where any penalty is imposed under section 73 or section 74 [or section 74A], no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act."

10. We are of the considered opinion that in case the aforesaid details of personal hearing are not incorporated in the notice DRC 01, before final order is passed against the assessee, he is required to be intimated the date, time and venue of personal hearing. We further clarify that respondents are not in fact required to issue Show Cause Notice calling upon him, but they are required to intimate the date, time and venue of personal hearing.

11. Thus, in the present matter, since the aforesaid

procedure is violated and no intimation about date, time has been informed to the petitioner, the impugned order dated 28.08.2024 and further order passed in appeal dated 06.03.2025 are required to be quashed and set aside, and hence the same are quashed. We further direct that the Adjudicating Authority i.e. respondent No.2 shall intimate the date and time to the petitioner so that the petitioner can appear personally. So far as venue is concerned, it is informed by learned AGP that Adjudicating Authority while intimating date and time, he/she always specifies the venue of hearing along with his designation. We however clarify that despite intimation to the petitioner about the date and time, in case he fails to appear, it will be open for the Adjudicating Authority to pass final order as it would be deemed to be held that the petitioner is not interested in personal hearing. We further clarify that all other rights and contentions of the petitioner are left open and can be taken up before the Adjudicating Authority.

12. Rule is made absolute to the aforesaid extent only.

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

**(PRANAV TRIVEDI,J)**

H.M. PATHAN/SB-11