IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6840 of 2021

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M/S KARMA BUILDCON THROUGH CHETAN RAMESHBHAI JOGI
Versus
UNION OF INDIA

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Appearance:
MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1
MS NIDHI VYAS, AGP for the Respondent(s) No. 1,2,3,4,5,6

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CORAM: **HONOURABLE MS. JUSTICE SONIA GOKANI**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 22/04/2021

ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. By way of the present petition under Article 226 of the Constitution of India challenge is to the validity of the Entry No.3(if) read with para-2 of the Notification No.11/2017 Central Tax (Rate) dated 28.6.2017 is amended by Notification No.3/19 Central Tax (Rate) dated 29.3.2019 issued under the Central Goods & Service Tax Act [hereinafter referred to as 'CGST Act'] and identical notification issued under the Gujarat Goods & Service Tax Act, 2017 which according to the petitioner has created artificial restriction on the value of the land for undivided share of the land for the purpose of transfer of

property for the undivided share. The same being ultra vires to Section 7(2) of the CGST Act read with Entry 5 of Schedule III and Sections 9(1) and 15 of the CGST Act with the following prayers :-

> *"(a) To issue an appropriate writ, order or direction and declare the Entry 3(if) along with Para 2 of Notification No. 11/2017Central Tax (Rate) as well as Entry 3(if) of Notification No.11/2017 – State Tax (Rate) as being ultra-vires Section 7(2) of the CGST Act read with Entry No.5 of Schedule III to the CGST Act as well as ultra-vires Section 9(1) and Section 15 Of the CGST Act and illegal;*
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> *(b) In any case this Hon'ble Court may be pleased to strike down and declare Entry 3(i0 of Notification No. 1 1/2017 Central Tax (Rate) as well as Entry 300 of Notification No 1 1/2017 – State Tax (Rate) along with Para.2 of both the notification as being manifestly arbitrary, grossly discriminatory and violating Article 14 of the Constitution of India, 1950 as well as ultra-vires Article 246A of the Constitution of India. 1950;*
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> *(c) To issue writ of or in the nature of a certiorari or any other appropriate writ, order or direction, quashing the search proceedings initiated by the respondent No.6, being without the authority of law and in violation of provisions of Section 67(2) of the CGST Act;*
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> *(d) To issue writ, order or direction, directing the respondents to refund the*

amount of tax and interest amounting to Rs. 10,44,824/- which was illegally collected via Form DRC-03 dated 06.03.2021 as search proceedings were itself illegal.;

(e) Pending admission, hearing and till final disposal of this petition, Your Lordships may be pleased

(A) to stay the implementation of Entry 3(if) along with Para.2 of Notification No.11/2017-Central Tax (Rate);

(B) to stay the operation of the order of The Gujarat Appellate Authority for Advance Ruling dated 08.03.2021 in Advance Ruling (Appeal) GUJ/GAAAR/APPEAL/2021/08·,

(C) to direct respondents from resorting to any coercive action against the petitioner;

2. Issue notice making it returnable on 14.6.2021. Ms.Nidhi Vyas, learned AGP waives service of notice on behalf of the State Government. Over and above regular mode of service, service through e-mode is permitted.

3. To be heard with Special Civil Application No.850 of 2017.

(SONIA GOKANI, J)

(VAIBHAVI D. NANAVATI,J)

K.K. SAIYED