

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

**R/WRIT PETITION (PIL) NO. 161 of 2018**

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RAJ SANJAYBHAI TANNA

Versus

UNION OF INDIA

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Appearance:

MR. RAJ S TANNA(10010) for the PETITIONER(s) No. 1,2  
for the RESPONDENT(s) No. 1,3,4

MR PRANAV TRIVEDI, AGP (99) for the RESPONDENT(s) No. 2

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**  
and  
**HONOURABLE MR.JUSTICE B.N. KARIA**

**Date : 30/08/2018**

**ORAL ORDER**

**(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. This petition, in the nature of public interest, is filed by two petitioners. Petitioner No.1 is a practicing advocate, we are informed, mainly on the taxation side. Petitioner No.2 is also a tax consultant though we are informed not a practicing advocate. The petitioners have challenged the constitutional validity of section 47 of the Central Goods and Service Tax Act, 2017 ['CGST' for short] as being ultra vires the constitution. Section 47 of the CGST Act pertains to late fee for filing returns beyond the prescribed time limit. Sub-section (1) of section 47 provides that any registered person who fails to furnish the details of outward or inward supplies or returns

by the due date, shall pay a late fee of one hundred rupees for every day of such delay subject to a maximum of five thousand rupees. Sub-section (2) of section 47 further provides that any registered person who fails to furnish the return as required under section 44 by the due date would be liable to pay a late fee of one hundred rupees for every day of delay subject to a maximum of an amount calculated at a quarter per cent of his turnover. Principal contentions of the petitioners are that the Government is trying to recover penalty in the guise of late fee charges. As a result, the dealers losing their valuable right of appeals as well as right to point out that there was sufficient cause preventing them from filing the return within the due date. It was argued before us that in all previous laws which have been repealed by the statutes enacted under the new GST regime, such charges were categorized as penal in nature. Various practical difficulties in filing the returns including such as malfunctioning of the official portal which often times, prevents uploading of the returns were cited.

2. We are not inclined to entertain this petition which is categorized as a public interest litigation. We are of the opinion that this is not a case where PIL jurisdiction should be exercised. By the account of the counsel for the petitioners, there are not less than 1.30 crore dealers affected by the said provision. There is nothing to suggest that none of these

affected persons can take up the cause and approach the Court of law as may be advised. Majority if not all of them would be persons with proper means who can also avail proper legal advice. This is not a case where the petitioners are espousing the cause of a weaker section of the society who, on account of hardships and handicaps inherently faced by them, are unable to knock the door of justice. The public interest jurisdiction of the High Court and the Supreme Court, over a period of time, has been considerably expanded to take within its sweep range of issues not confined to the assertion of rights of weaker sections of the society or the marginalized groups. Nevertheless, even after such expansion, public interest is confined to environmental issues, the issues of public accountability and such like. The reference in this respect can be made to the decision of Supreme Court in case of State of *Uttaranchal vs. Balwant Singh Chaufal and ors* reported in **(2013) 3 SCC 402**.

3. In the present petition, the petitioners who are themselves active tax consultants and tax practitioners have challenged the vires of section 47 of CGST Act. They are obviously indirectly concerned with the same. As noted, they pointed out that there are millions of dealers who would be adversely affected by the provisions made therein. There is no reason why such an issue should be examined in a public interest petition when, as noted above, the group of persons whom the statute affects does not

suffer from any handicap preventing them from taking up the litigation themselves and pursuing it.

4. Petition is dismissed.

(AKIL KURESHI, J)

(B.N. KARIA, J)

JYOTI V. JANI

