IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3406 OF 2024
WITH
INTERIM APPLICATION NO.1695 OF 2026

Foodlink F&B Holdings (India) Private Limited,
3rd floor, 301, Safal Pride, Sion Trombay Road,
Deonar Gaon, Chembur, Mumbai-400 088. Petitioner

versus

1. The Union of India through Ministry of Finance,
2. The Commissioner of CGST & E, Navi Mumbai,
3. The Superintendent of CGST & CE, Navi Mumbai,
4. State Bank of India, Branch at Corporate Park, Sion-Trombay Road, Mumbai,
5. State Bank of India, branch at Nebula Apartment, Andheri (W), Mumbai-400 058,
6. IDBI Bank Ltd; Branch at Deonar,
7. Kotak Mahindra Bank Ltd, Branch at Chembur, Mumbai,
8. The Cosmos Co-op. Bank Ltd, Branch at Percepolis premises COHS, Vashi, Navi Mumbai.
9. HDFC Bank Ltd, Branch at Chembur (HDFC 0000425),
10. HDFC Bank Ltd, Branch at Chembur (HDFC 0000013),
11. Yes Bank Ltd, Branch at New Link Road, Andheri (W), Mumbai-400 053. Respondents

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Mr.Vikram Nankani, Senior Advocate, with Mr.Prakash Shah, Senior Advocate, with Mr.Mihir Mehta, Mr.Vikas Poojary i/by PDS Legal for Petitioner.

Mr.Karan Adik with Ms.Megha Bajoria, Mr.Chirag Sawant, Ms.Sangeeta Yadav for Respondents-State

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CORAM: G. S. KULKARNI & AARTI SATHE, JJ.

DATE: 4th March 2026

P.C.

1. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs: -

> "(a) this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India declaring Section 83 of CGST Act, 2017 as it exists today, as ultra vires of Articles 14, 19 and 21 of the Constitution of India, for being wholly unreasonable, unguided, without any accountability for its misuse and manifestly arbitrary; or in the alternative, this Hon'ble Court may please read down the extent, scope and application of Section 83 by explaining, guiding and delineating the same in a just manner with such cautions, pre-requisites and consequences for abuse thereof, so as to save it from unconstitutionality;
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> (b) this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof to quash and set aside the eight impugned orders all dated 27.02.2024 passed by Respondent No. 2 purporting to attach the bank accounts of the Petitioner under Section 83 of the Act (Exhibits Al to A8);
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> (c) this Hon'ble Court be pleased to appoint Chartered Account or Costs Accountant to conduct a Special Audit in terms of Section 66 of the CGST Act and examine and verify the correctness of the Reconciliation submitted with representations dated 25.10.2023, 29.11.2023, 20.12.2023, 15.01.2024, 23.01.2024, and 15.02:2024 of the Petitioner with their GST returns, Bank Statements, Books of Accounts, Electronic Credit Ledger and submit its report before this Hon'ble Court;
> (d) That this Hon'ble Court be pleased to direct the Respondent No. I to hold an inquiry into the conduct and role of the officials who were instrumental in continuing to act on an information found to be false, and instrumental in draconian attachment of bank account without even examining and verifying the correctness of the Reconciliation submitted with representations dated 25.10.2023, 29.11.2023, 20.12.2023, 15.01.2024, 23.01.2024, and 15.02.2024 of the Petitioner in wholly arbitrary manner;
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> (e)this Hon'ble Court be pleased to issue writ of Prohibition or any other appropriate writ in the nature of Prohibition ordering and directing the Respondents more particularly Respondent No. 2, not to debit any amount from the bank accounts which are under attachment vide impugned orders dated 27.02.2024 passed by Respondent No. 2;
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> (f) that pending the hearing and final disposal of the above Petition and subject to such terms and conditions as may deem just and expedient, this Hon'ble Court be pleased to stay the effect and operation of impugned orders dated 27-02-2024 passed by Respondent No. 2"

2. This Petition was heard on the earlier occasions when orders have been passed. A Co-ordinate Bench of this Court passed two detailed orders dated 14th March 2024 and 28th March 2024, whereby a special audit of the Petitioner's accounts was directed to be undertaken by a Chartered Accountant. The relevant orders dated 14th March 2024 and 28th March 2024 are reproduced below: -

<u>Order dated 14th March 2024</u>

"1. Having heard the learned counsel for the petitioner for some time, and considering the contention of the petitioner in respect of the 37 bank accounts, whether the funds were transferred from different accounts and disclosure was made in the G.S.T. return, and whether the amount which is objected by the department is the amount in the hands of the petitioner on which the GST was not paid, will be required to be verified. In our opinion, without prejudice to the investigation, such verification be conducted with the assistance of an independent Chartered Accountant to be appointed by the Department. The petitioner shall render all cooperation, and all the material on which the petitioner intends to rely on to show interse transfer in these bank accounts and any other material that may be produced by the petitioner be gone into. The fees of the Chartered Accountant shall be borne by the petitioner.

2. The Chartered Accountant shall form a prima facie opinion on the material which would be placed for his consideration by the advocate for the petitioners in regard to the observation as made in the order dated 11th March 2024 passed by the Commissioner CGST and Central Excise, Navi Mumbai, Mr.Deepak Bhilegaonkar.

3. Let the Chartered Accountant submit a report to the Department, which be placed before the court on the adjourned date of hearing.

4. Accordingly, stand over to 26th March 2024, High on Board.

5. All contentions of the parties are expressly kept open.

6. Parties to act on an authenticated copy of this order."

<u>Order dated 28th March 2024</u>

"1. In the backdrop of our order dated 14th March 2024, the independent Chartered Accountant, Mr. Sagar Shah, has furnished a report dated 24 March 2024 addressed to the Commissioner CGST and Central Excise, Navi Mumbai. The same is also placed on record as annexure to the affidavit in reply dated 26 March 2024 of Mr. Gurtesh Matharu, Deputy Commissioner, CGST and Central Excise, filed on behalf of the Respondents.

2. We have heard the learned counsel for the parties on the said report. Some of the relevant issues of discussion on the findings as recorded in the said report of the Chartered Accountant can be noted from the following contents of the said report, which reads thus:

"2.23 Given the limited scope of work for our appointment, we have not verified transactions other than inter-bank transfers.

Our preliminary view with respect to "whether the amount which is rejected by the department is the amount in the hands of the petitioner on which GST was not paid" is as under –

- *Given that there are bank accounts other than 39 Bank Accounts considered by the Department, the value of INR 722.18 Cr needs to be re-calculated.*

- *Given the inter-bank transfers within 59 bank accounts and other credits on account of FD Closures, investments received, etc. we cannot ascertain the source of funds for individual transactions. This is in consonance with the discussions with the petitioner vide para 2.21.*

- *Given that there are inter-bank transfers and other receipts in the nature of FD Closures, investments received, etc the value of INR 562.18 Cr derived as undeclared sale proceeds needs to be re-calculated in case the source of funds and examination of movement of funds from accounts outside Maharashtra can be ascertained*

The summary of our view presented above is as under: -

- *Whether INR 512 Crores represent inter-bank transfers - Basis the bank statements reviewed and our detailed comments provided in para 2.1 to para 2.14, we believe that inter-bank transfers as mentioned by the petitioner are reflected in the bank statements and INR 512 represents inter-bank transfer of funds which are transferred from such different accounts belonging to the petitioner. It is imperative to note that individual source of funds for such inter-bank transfers could not be ascertained;*

- *Whether disclosure of said inter-bank transfers is made in GST Returns - Basis our detailed comments provided in para 2.15 and 2.16, we believe that said inter-bank transfers of INR 512 Crores are not disclosed in GST returns; and*

- *Whether the amount which is objected by the department is the amount in the hands of the petitioner on which GST was not paid - Basis our detailed comments provided in para 2.17 to para 2.23, we believe the amount to be taxed in the hands of the petitioner needs to be re-calculated after considering the additional bank accounts and such other subtractions as may be deem fit in case the source of funds can be ascertained which in the given case has not be ascertained and is in consonance with the comments of the petitioner vide para 2.21."*

3. Considering such apprehension as expressed in the report, Mr. Nankani, learned Senior Counsel for the petitioner, on instructions, would fairly submit that the petitioner is willing to show its bona fides and the said Chartered Accountant, Mr. Sagar Shah, himself can undertake the exercise to check the credibility and authenticity of the inter-bank transactions, which according to the petitioner are amounts which are accounted for GST and which are the basis on which the department has apprehension that the GST has been evaded.

4. We do not intend to dwell on such issues as it is agreeable to the parties that this exercise could be undertaken by the same Chartered Accountant. Let the petitioner furnish the materials to justify the inter-bank transactions.

5. We accordingly adjourn the proceedings for a period of four weeks. By such time, the entire exercise can be undertaken by the Chartered Accountant. The petitioner shall cooperate in providing every information which the Chartered Accountant would require to ascertain such claim being made by the petitioner. The proceedings before the Chartered Accountant shall be held in co-operation by both the sides. Let the report of the Chartered Accountant be placed on record, so that further appropriate orders can be passed on the adjourned date of hearing.

6. Accordingly, stand over to 29th April 2024.

7. Needless to observe that the petitioner shall, in the meantime, cooperate in any investigation which is being undertaken by the department. In the event the department is of the opinion that the petitioners are not co-operating, they are entitled to approach this court by an appropriate application for any action, they intend to take against the petitioner and its directors etc."

3. Pursuant to the above orders, a special audit under Section 66 of the Central Goods and Services Tax Act, 2017 (CGST Act) was undertaken and the Chartered Accountant vide his email dated 26th April 2024 submitted his report. It is the Petitioner's contention that the Chartered Accountant in his report has opined that out of the total credits of Rs. 1197 Crores, he was able to triangulate Rs. 1185.39 Crores (more than 99%), and the same appears to be credible and authentic. However, in regard to the balance credits of Rs. 10.28 Crores (less than 1% of the total credits), the Chartered Accountant was not able to authenticate the same. The Petitioner has therefore filed the aforesaid Interim Application No. 1695 of 2026 praying for the following reliefs: -

"(a) this Hon'ble Court be pleased to direct the Respondents to call for an additional report from the Learned Chartered Accountant Mr. Sagar Shah, at Petitioner's costs, qua the entries relating to Rs. 10.28 crores referred in paragraph 15 of this IA and explained in detail in the Petitioner's affidavit dated 29.04.2024 within 8 weeks from the date of Order of this Hon'ble Court;

(b) For such further and other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;"

4. This Interim Application is placed on board for hearing today. Before deciding the present Interim Application along with Writ Petition No. 3406 of 2024, it would be beneficial to set out certain relevant facts: -

i. The Petitioner is challenging in the Writ Petition the legality and validity of eight purported orders, all dated 27th February 2024, passed by Respondent No. 2, (hereinafter collectively referred to as the impugned attachment orders), issued under Form DRC-22, provisionally attaching the bank accounts of the Petitioner maintained with Respondent Nos. 4 to 11, and directing Respondent Nos. 4 to 11 not to allow debit from the bank accounts mentioned therein without prior permission.

ii. On 8th August 2023, various teams from the office of Respondent No. 2 carried out search at three premises of the Petitioner and a Panchanama to that effect was drawn. On 23rd August 2023, the Petitioner submitted the list of its 49 bank accounts via email.

iii. On 24th August 2023, other details and documents were submitted by the Petitioner, as required by Respondent No. 3. On 29th August 2023, the Petitioner submitted bank statements of operative accounts, non-operative accounts and list of all bank account numbers maintained by the Petitioner. On 12th September 2023, on the instructions of the Respondents, the Petitioner also submitted details regarding IDBI bank account numbers and bank account summary for the Financial Years (FY) 2021-2022 and 2022-2023.

iv. Between the period 15th September 2023 to 5th October 2023, the Petitioner provided further additional details as sought by Respondent No. 3. On 11th October 2023, Respondent No. 3 issued letters to several clients or customers of the Petitioner, as well as to their other investors informing them regarding the investigations being conducted qua the Petitioner and seeking various details from them purportedly under Section 70 of the CGST Act.

v. On 20th October 2023, defamatory news articles were published in Sprouts and News Today 24x7.com by one Mr. Unmesh Gujarati against the Petitioner, which adversely affected the Petitioner's repute.

vi. On 19th December 2023 and 21st December 2023, Suit (Lodging) No. 34269 of 2023, was filed by the Petitioner before this Court, and vide orders of even date, this court was pleased to restrain the private defendants therein, including the said Shri Unmesh Gujarati, from publishing information except truthful reporting of the court proceedings.

vii. On 23rd October 2023, a firm of Chartered Accountant Jain Ambavat & Associates LLP issued report on the inter-bank transfers within the accounts of the Petitioner for FY 2021-2022 and FY 2022-2023. On 25th October 2023, Petitioner submitted details of all the bank accounts, bank statements and also reconciliation of GST returns with bank statements and books of accounts and other documents as desired by Respondent No. 3, along with the certificate issued by the Chartered Accountant firm (Jain Ambavat & Associates LLP) certifying the inter-bank transactions and list of all bank accounts maintained by the Petitioner for FY 2021-2022 and FY 2022-2023.

viii. On 26th October 2023, the details of the inter-bank transfers in the prescribed format as given by Respondent No. 3 were submitted by the Petitioner. Later, on 29th November 2023 and 8th December 2023, upon instructions of the Respondents, further details were provided by the Petitioner for FY 2020-2021. The Chartered Accountant firm also issued a report on the inter-bank transfers within the accounts of the Petitioner in FY 2020-21.

ix. On 11th December 2023, Mr. Mahesh Patil, an officer of the Petitioner, was taken in custody and were not allowed to leave the office of Respondent No. 3. It is the Petitioner's contention that his statement was extorted under threat and coercion, and as per the dictates of Respondent No. 3. Without obtaining any authorization, arrest of Mr. Patil was made and he was detained overnight. Thereafter, bail proceedings were initiated in so far as Mr. Patil was concerned and Mr. Patil was enlarged on bail by the Magistrate on 30th December 2023.

x. On 20th December 2023, the Petitioner, with supporting documents duly submitted that the case sought to be made out by Respondent No. 3 against the Petitioner was totally false. On 21st December 2023, the General Manager Finance of the Petitioner, Shri Manoj Jain, who was asked to assist Respondent No. 3 in verification of reconciliation, who had joined the Petititoner in December 2022, submitted his resignation. It is the Petitioner's contention that he was immediately summoned to appear on 22nd December 2023, and his statement was recorded. The Petitioner on 15th January 2024 once again made a written representation before Respondent No. 2.

xi. On 18th January 2024, Respondent No. 3 issued summons seeking appearance in his office on 19th January 2024 at 11 AM of one Mrs. Priya Gogate, Director, Public Relations, of the Petitioner. It is the Petitioner's contention that Respondent No. 3 in its malafide investigation carried out a search on 19th January 2024, but pertinently at the time of search, Mrs. Gogate was not at the premises. On 23rd January 2024, the Petitioner, upon instructions of Respondent Nos. 2 and 3, submitted various documents and made detailed representations.

xii. On 5th February 2024, vide summons, Mr. Vijay Punjabi was directed to appear in person on 9th February 2024 before Respondent No. 3 to give his oral evidence. Again, on 9th February 2024, Mr. Vijay Punjabi was directed to appear in person on 22nd February 2024 before Respondent No. 3 and give his oral evidence. Further, again summons were issued to other employees of the Petitioner, namely Ms. Priya Gogate and Mr. Prateek Patel, to appear before Respondent No. 3 on 20th February 2024 and 26th February 2024.

xiii. On 9th February 2024, 12th February 2024 and 13th February 2024, the Petitioner requested for exemption of Mr. Mahesh Patil, Mr. Sanjay Vazirani, Ms. Priya Gogate and Prateek Patel for appearance and reply to the summons. On 15th February 2024, the Petitioner submitted various documents and made detailed representation. The employees of the Petitioner, namely Mr. Vijay Punjabi, appeared before Respondent No. 3 and his statement was recorded.

xiv. Further on 22nd February 2024, another summons was issued to one

Mr. Amit Jhaveri, who appeared before Respondent No. 2 and his statement was also recorded. Another summons was also issued to Mr. Sanjay Manohar Vazirani, calling upon him to appear before Respondent No. 3 for tendering his oral evidence on 1st March 2024. Thereafter, on 27th February 2024, the impugned attachment orders were issued by Respondent No. 2., and on 29th February 2024, the residential premises of one Mr. Prateek Patel, the finance head of the Petitioner, were searched by the officers of the CGST Ahmedabad-South and the office laptop of Mr. Patel was seized. Mr. Prateek Patel was arrested by Respondent No. 3 from his house at Ahmedabad. Later on, applications were moved before the Additional Chief Metropolitan Magistrate to release Mr. Patel and thereafter, an application opposing the remand and consequential release of Mr. Patel from illegal arrest was also filed before the Additional Chief Magistrate, and thereafter proceedings were taken out for the release of Mr. Patel before the learned Court of 6th Judicial Magistrate, First Class, Vashi, Mumbai. Mr. Patel had also filed an application seeking bail in learned Court of Judicial Magistrate, First Class, Vashi, Navi Mumbai, who extended the remand.

xv. It is against the impugned attachment orders dated 27th February 2024 that the present writ petition has been filed on various grounds as mentioned in the aforesaid writ petition. By way of the impugned attachment orders issued in Form GST DRC-22, 36 bank accounts of the Petitioner were provisionally attached, which is the subject-matter of challenge in the present petition.

xvi. As stated aforesaid, detailed orders dated 14th March 2024 and 28th March 2024, reproduced in paragraph 2 above, appointing a special auditor have been passed on the basis of prayers made by the Petitioner that considering the complexity of accounts in so far as the Petitioner is concerned, and the fact that the Petitioner holds number of bank accounts, and that there were inter-bank transfers, specifically by way of prayer clause (c), a relief is sought that a Chartered Accountant or Costs Accountant be appointed to conduct a special audit in terms of Section 66 of the CGST Act and examine and verify the correctness of the reconciliation submitted through representations dated 25th October 2023, 29th November 2023, 20th December 2023, 15th January 2024, 23rd January 2024 and 15th February 2024 of the Petitioner with its GST returns, bank statements, books of accounts, electronic credit ledger and submit his report before this court.

xvii. The Petitioner, by way of affidavit dated 26th March 2024 submitted the details of the correspondence undertaken by it with the Chartered Accountant appointed for the purposes of the special audit under Section 66 of the CGST Act. The Respondents, by an additional affidavit of even date further placed on record the report of the Chartered Accountant dated 24th March 2024 pursuant to the order of this Court dated 14th March 2024. Further, an affidavit-in-rejoinder dated 27th March 2024 was filed by the Petitioner in response to the additional affidavit of the Respondents dated 26th March 2024.

xviii. The Petitioner, therefore, has filed the aforesaid Interim Application No. 1695 of 2026 after the special audit has been conducted by the Chartered Accountant. In the its Interim Application, it is the Petitioner's contention that the Chartered Accountant has been able to verify only information or accounts in so far as the amount of Rs. 1,197 crores is concerned, and he was able to triangulate only Rs. 1,185.39 crores, which is more than 99% of the total credits, and the same appeared to be credible and authentic. However, with respect to the balance credits of Rs. 10.28 crores, i.e., less than 1% of the total credits, the Chartered Accountant was not able to authenticate the same. Hence, it is the Petitioner's contention by way of the Interim Application that this court be pleased to further direct the Respondents to call for an additional report from the Chartered Accountant, Mr. Sagar Shah at the Petitioner's cost qua the entries relating to 10.28 crores, referred in paragraph 15 of the Interim Application, and explained in detail in the Petitioner's affidavit dated 29th April 2024, within eight weeks from the date of the order of this Court.

5. We have heard learned counsel, Mr. Vikram Nankani, Senior Advocate, along with Mr. Prakash Shah, Senior Advocate, Mr. Mihir Mehta, and Mr. Vikas Poojary on behalf of the Petitioner. We have also heard Mr. Karan Adik, Ms. Megha Bujaria, Mr. Chirag Sawant and Ms. Sangeeta Yadav on behalf of the Respondents. With the assistance of learned counsel for the parties, we have perused the record of both the proceedings, accordingly, we proceed to decide the interim application and the Writ Petition.

6. It is Mr. Nankani's contention, that since the Chartered Accountant has not been able to match the entire entries, it would be in the interest of justice that another additional report from the Chartered Accountant be called for. He has also submitted that the Petitioner will cooperate and furnish all additional details as required by the learned Chartered Accountant, if this additional report is called for by this court. It is his contention that this exercise be carried out so that the entire

picture insofar as the special audit is concerned will be clear and the Petitioner will be bound by the report as given in the special audit. It is therefore his contention that the additional report from the special auditor will serve the aforesaid purpose.

7. *Per contra*, learned Advocate on behalf of the Respondents, Mr. Adik, has submitted as follows.:-

i. It is submitted that the Interim Application filed by the Petitioner to direct the Respondents to call for an additional report from the learned Chartered Accountant Mr. Sagar Shah at the Petitioner's cost deserves to be dismissed in so far as the said prayer for submitting an additional report qua the entries relating to Rs. 10.28 crores referred in para 15 of the Interim Application. It is his contention that the Petitioner has suppressed vital details and facts in the aforesaid Interim Application inasmuch as the Petitioner has not disclosed in the said Interim Application that the Petitioner intends to come out with an Initial Public Offering (IPO).

ii. He has further submitted that the Petitioner ought to have disclosed true, full and clear purposes for the present Interim Application, which has been taken out almost after a gap of two years from the date the orders dated 14th March 2024 and 28th March 2024 passed by this Court. It is also his submission that the present writ petition is rendered infructuous inasmuch as the present petition has been filed to challenge the legality and validity of eight orders dated 27th February 2024, i.e. the impugned attachment orders in Form DRC-22, provisionally attaching the 36 bank accounts of the Petitioner, and the said attachment has now been lifted as the Petitioner's bank accounts stand defreezed as per emails of the

Department to the banks dated 10th February 2026 and 12th February 2026.

iii. It is further his submission that the Chartered Accountant's appointment as per Section 66 of the CGST Act was agreed upon by both sides to:

a. Form a prima facie opinion,

b. To reflect a cooperative approach adopted by both the parties, namely the Revenue authorities and the taxpayer,

c. For the purposes of bank attachments, and

d. Without prejudice to the investigation.

The said audit report was not for the purposes of giving a clean chit to the Petitioner and the Petitioner was under a mistaken belief that he was getting a special SIT or a special court-monitored investigation.

iv. He has further submitted that the Chartered Accountant's report was primarily for the purposes of the bank attachment proceedings and since now the bank attachment itself does not survive, the additional report is not called for. He has also submitted that a lot of other material has been gathered and unearthed during the investigation and the Chartered Accountant, Mr. Sagar Shah, is not a substitute for investigation, nor is he an adjudicating authority as tried to be portrayed by the Petitioner.

v. The relevant paras of the affidavit in reply dated 25th February 2026 filed on behalf of the respondents by one Mr. Ranbir Bose, Joint Commissioner of CGST and Central Excise are reproduced below.

> "8. Hence it can be seen that the CA's appointment was by both sides, for (i) a prima face opinion, and (ii) to give a picture in cooperation by both sides i.e.

revenue & tax payer, (iii) for the purposes of bank attachments, (iv) without prejudice to the investigation. I say that the petitioner is in some form of a mistaken belief, or an erroneous assumption, that he is getting a special S.I.T., or a Special Court Monitored Investigation. I say and submit that there is no special treatment for this Petitioner, nor is he deserving the same. I say that the lst or 2nd C.A report is not a carte blanche to the Petitioner and can be considered during the adjudication of the SCN if the Petitioner wishes to contest the proceedings.

9. Further, it would not be out of place to mention that the financial managers/ accounts heads of the Petitioners were arrested basis several transactions undertaken by them some of which were also found with unauthorised transaction, (Forex). The petitioner has filed Criminal WRIT Petitions, wherein no relief as prayed for is granted by this Hon'ble Court and over 2 hearings have taken place.

12. I say that the matter has moved forward and the investigation in the case has been concluded. Basis the reply of the petitioner to the DRC-01A and any further investigation, a Show Cause Notice may be issued to the party and it can rely on any documents, it so chooses for adjudication. The C.A. report was for the purposes of Bank Attachment proceedings. A lot of further and other materials has been gathered and unearthed during investigation and the C.A Mr. Sagar Shah is not a substitute for investigation nor is an adjudicating authority as tried to be portrayed by the Petitioner.

13. This Hon'ble court vide order dt. 28.03.2024 directed the department that C.A. Mr. Sagar Shah himself should undertake the exercise to check the credibility and authenticity of the interbank transactions, which according to the petitioner are amounts which are accounted for GST and which are the basis on which the department has apprehension that the GST has been evaded. To proceed further in the investigation letter's dt. 06.09.2024 and reminder dt. 19.04.2024 were written to the petitioner (Exhiblt B) where-in the petitioner was requested to submit all taxable invoices i.r.o. turnover declared since 2020 till March 2023 for verification as complete compliance in this regard has not been made after repeated request.

14. The petitioner vide letter dt 24.09.2024 (Exhibit C) submitted their reply where-in they have categorically stated that "Chartered Accountant, Shri Sagar Shan had undertaken the detailed exercise to check the credibility and authenticity of the inter-account transactions and to ascertain - (i) Source of funds for all Bank Accounts in India, and (ii) verification of Sale Invoices"

15. First request letter dt 01.10.2024 (Exhibit D) was written to CA Sagar Shah where-in he was requested to provide the following point wise details to this office:

a. As to whether M/s Foodlink F&B (Holdings) Put Ltd have submitted all Taxable and Non-Taxable invoices in respect of the total aggregate turnover mentioned in the report at. 26.04.2024, if so, please provide the copies of such invoices submitted to you for verification.

b. Hon'ble Bombay High Court has categorically asked to undertake the exercise to check the credibility and authenticity of interbank transactions from GST point of view which according to the petitioner are amounts which are accounted for GST) for such verification the amount which is claimed as inter account transfer should have origin in a taxable or non-taxable Invoice. Hence you are requested to clarify as to whether each taxable or non-taxable invoice in this regard have been verified by you or not and further submit the copies of invoices verified by you.

16. CA Sagar Shah vide letter dt 08.10.2024 (Exhibit E) have submitted his reply where-in he only confirmed that only 250 Invoices on sample basis were verified by him further clarification as per the Hon ble High Court mandate given to him was not forth coming from his reply.

17. Second letter dt 17.10.2024 was written to CA Sagar Shah to provide further clarification in line with the Hon ble High Court Mandate where-in he was categorically asked to undertake the exercise to check the credibility and authenticity of interbank transactions from GST point of view which according to the petitioner are amounts which are accounted for GST)

18. CA Sagar Shah vide his letter dt 23.10.2024 (Exhibit F) submitted his reply where-in he restricted himself and did not clarify/offer his comments as to whether he has verified credibility and authenticity of inter-account transfers which according to the petitioner are the amounts which are accounted for GST and chose to remain silent on the most relevant part of the Hon'ble Court Order and the actual case of the department where-in till date sources of Such Inter-account Transfers were not provided by the petitioner.

19. Accordingly, Statement dt 04.11.2024 (Exhibit G) of CA Sagar Shah under Section 70 of the CGST Act, 2017 was recorded to examine the facts relevant from GST point of view where-in he deposed as under:-

a. He did not find source of fund of such inter-account transfers during the course of his first verification report at 24.03.2024 (Exhibit H)

b. He confirmed that to the best of his knowledge & understanding Source of fund of inter-account transactions at individual transaction level can't be determined & thus not verified during course of second verification report dt 26.04.2024 (Exhibit I)

c. He confirmed that in his view the entire 517 Crores cannot qualify to be treated as "not taxable". To identify the source of funds for individual transactions and determining the taxability in respect of said inter-account transfer all the invoices will have to be verified to categorize the inter-account transfer as "Non-Taxable" or otherwise.

d. He confirmed that he had verified only 250 Invoices on sample basis shared by the advocates of the petitioner vide email dated 20th April 24 & 24th April 2024.

e. He confirmed that the source of Funds for the Inter-account transactions for Rs.517 Cr at individual transaction level can't be determined as per his understanding, view & not explained to his team by Food Link during the course of verification.

f. He confirmed that Rs.517.22 Cr have a debit & corresponding credit effect & qualify as bank transfers and his view is restricted to transfer & movement of funds. Further he confirmed that in his view & understanding source of fund of Inter-account transactions at individual transaction level can't be determined & thus not verified.

g. He confirmed that the source of funds of FD was not required nor verified by him during verification. Original documents for the investment agreement of Rs.60 Cr, were not provided to him, he had verified the scan copies of the same. Here it is pertinent to note that during the course of the investigation Shri Sanjay Vazirani, the Chairman Managing Director of the company had under taken to submit the original registered agreement copy in respect of Rs 60 Crores investment done by an individual investor.

h. He confirmed and agreed that to provide a holistic & detailed GST Point of View & Ascertain the Source of Funds for all the Inter-account transactions credits at transaction level for GST transactions, all the invoices will have to be verified & positions will have to be reviewed accordingly.

20. On the basis of the above stated facts it is humbly submitted that complete compliance of this Hon'ble Court dt 28.03.2024 (Exhibit J) has not been made as regard the Mandate given there-in where-in CA Sagar Shah was categorically asked to undertake the exercise to check the credibility and authenticity of interbank transactions from GST point of view (which according to the petitioner are amounts which are accounted for GST) and the same has not been done during the verification process under taken by CA Sagar Shah by his own admission detailed above.

21. Thus, it appears by this Application the Petitioner is trying to make the assistance/help availed by both parties mutually of C.A. Mr. Sagar Shah, as a clean chit to itself. There is no clean chit and neither is the C.A. qualified to give any clean chit for investigation purposes."

8. We have heard learned counsels on behalf of the Petitioner and the Respondents. After hearing both sides and after perusing the documents and papers, we are of the view that the present Interim Application does not make out a case for appointing, or for directing another special audit in so far as the Petitioner is concerned qua the amount of Rs. 10.28 crores as contended by the Petitioner. This in view of the fact that the special audit once conducted, is a final determination and consistently asking for fresh reports is not what the mandate of the audit is.

9. It will be beneficial to reproduce the provisions of Section 66 of the CGST Act, pursuant to which special audit is conducted. Section 66 read thus-

66. Special audit.— (1) If at any stage of scrutiny, inquiry, investigation or any other

> proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.
>
> (2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified: Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.
>
> (3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.
>
> (4) The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.
>
> (5) The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.
>
> (6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Thus, on a plain reading of Section 66 of the CGST Act, it is clear that a special audit can be conducted if the assessee's case is complex in nature and any officer not below the rank of Assistant Commissioner is of the view that in the interest of revenue value has not been correctly declared or credit availed is not within normal limits, then with the approval of the Commissioner, such a special audit can be conducted.

10. As rightly pointed out by Mr. Adik this special audit has been conducted on mutual basis, and to form a *prima facie* opinion and give a picture in cooperation

by both sides, and also for the purposes of bank attachments vide the impugned attachment orders, which bank attachments do not survive anymore. It is therefore our view that by calling for an additional report for an already completed special audit, no purpose would be served in so far as the Petitioner is concerned.

11. We have noted the contentions as made by Senior Counsel Mr. Vikram Nankani, that the audit report which has been submitted pursuant to the orders of this Court dated 14th March 2024 and 28th March 2024, would not culminate into an order as there would be no hearing or show-cause notice which would be issued to the Petitioner, and hence the amount of Rs. 10.28 Crores which the Chartered Accountant was unable to authenticate will prejudice the Petitioners in subsequent proceedings and in view thereof the Interim Application has to be allowed. This to our mind cannot be the ground to ask or pray for a supplementary audit report, inasmuch as Section 66 of the CGST Act is very clear that the special audit is prepared after giving an opportunity of hearing to the concerned person whose accounts are being audited and on the basis of the material gathered, including books of accounts examined and audited by the Chartered Accountant or a Cost Accountant as may be, nominated by the Commissioner. It is our view that once a special audit has been conducted as per the mandate of Section 66 of the CGST Act, and a report has been given by the auditor, then to once again allow for a supplementary audit report would be against the mandate of Section 66 and would amount to reopening of the exercise which has already been carried out by the special auditor.

12. Hence, considering the aforesaid submissions and also the objections raised by the Department by way of Affidavit-in-reply dated 25th February 2026 to the Interim Application, we are of the view that this interim application deserves to be dismissed. Further, the audit report was only for the purpose of bank attachment of the 36 accounts which were attached by the impugned attachment orders dated 27th February 2024. However, the said attachment has been lifted and the Petitioner's accounts have been de-freezed, as per the emails dated 10th February 2026 and 12th February 2026 to the banks by the Department, and hence nothing survives to once again reopen the audit report.

13. Further, we are also of the view that Writ Petition No. 3406 of 2024, which was filed in respect of the attachment of 36 accounts of the Petitioner by the impugned attachment orders dated 27th February 2024 has also been rendered infructuous as the attachments have been lifted and the Petitioner's accounts have been de-freezed. Hence nothing survives in the writ petition. Further, none of the prayers as ought for by the Petitioner in the writ petition survive inasmuch as a Charted Accountant has already been appointed for conducting a special audit under Section 66 of the CGST Act and he has accordingly submitted his report, and the bank accounts which were subject to attachment by way of the impugned attachment orders have already been de-freezed.

14. In view of the aforesaid Interim Application No. 1695 of 2026 is dismissed and Writ Petition No. 3406 is disposed of as infructuous. No Costs.

(AARTI SATHE, J.) **(G. S. KULKARNI, J.)**

M.S.Thatte