

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 9151 of 2021

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M/S BODAL CHEMICALS LTD.
Versus
UNION OF INDIA

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Appearance:

AMAL PARESH DAVE(8961) for the Petitioner(s) No. 1,2
MR PARESH M DAVE(260) for the Petitioner(s) No. 1,2
NOTICE SERVED for the Respondent(s) No. 2,3,4
PRIYANK P LODHA(7852) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 11/02/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs:

“(A) That Your Lordships may be pleased to issue a Writ of Mandamus or any other appropriate writ, direction or order, thereby directing the Respondents to allow the Petitioner to furnish, if necessary manually, GSTR-6 Return with details of ISD credit of Rs.20,52,989/-;

“(B) That Your Lordships may be pleased to issue a Writ of Mandamus or any other appropriate writ, direction or order, thereby directing the Respondents herein, to allow the Petitioner to take ISD credit of Rs.20,52,989/- in the ISD Register and to distribute such credit of Rs.20,52,989/- to the Petitioner’s Constituents;

“(C) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to direct the Respondents to allow the Petitioner to distribute ISD credit of Rs.20,52,989/- for being utilized in respect of payment of GST liability of the Petitioner;

“(D) Pending hearing and final disposal of the present petition,

Your Lordships may be pleased to direct the Respondents to permit the Petitioner to file all the GSTR – 6 Returns for the previous period without charging and recovering any penalty or late fee;

(E) An ex-parte ad-interim relief in terms of para 17(C) above may kindly be granted;

(F) Any other further relief that may be deemed fit in the facts and circumstances of the case may also please be granted.”

2. It appears from the materials on record that the writ applicant is a public limited company inter alia engaged in the business of manufacture of chemical products like H-Acid, Vinyl Sulphone, Dyes etc. It is not in dispute that the writ applicant was registered as the Input Service Distributor (ISD) under the Cenvat Credit Rules read with the Central Excise Rules. Having regard to the same, the writ applicant was availing the credit of various input transactions as the ISD for distributing proportionate credit to each of the business premises in accordance with Rule 7 of the Cenvat Credit Rules.

3. The Central Goods and Services Act, 2017 along with the CGST Rules came into force with effect from 01.07.2017. The un-utilized credit lying in the credit register of the assesseees was allowed to be transferred and carried forward to the electronic credit ledger under the CGST Act by filing a return in the Form STR – 3 detailing therein the un-utilized credit and other relevant information. A declaration in Form GST TRAN – 1 was also required to be filed by the registered person under the CGST Act by 27.12.2017.

4. In November, 2017, the writ applicant filed GST TRAN – 1 wherein the balance of the Cenvat Credit lying with the writ applicant on 30.06.2017 including the un-utilized balance of ISD Cenvat Credit was Rs.20,52,989/-. The writ applicant filed a

return in Form CGST – 06 with details of balance of Cenvat Credit lying on 30.06.2017 for transferring such credit to the GST regime. However, on account of an error in the GST network, the Cenvat Credit balance in the return was shown at Rs.2,96,528/-. The ISD balance of Rs.20,52,989/- was not added or included in the balance of the ISD credit in the return.

5. The writ applicant has been requesting the Nodal Officer and also the jurisdictional Assistant Commissioner of GST for correcting the balance in the ISD return by including the balance credit of Rs.20,52,989/-. Over a period of time, many representations have been filed by the writ applicant as regards the aforesaid but of no avail. In such circumstances referred to above, the writ applicant is here before this Court with the present writ application.

6. We have heard Mr. Tripathi, the learned counsel appearing for the writ applicant and Mr. Priyank Lodha, the learned Standing Counsel appearing for the Union.

7. Mr. Lodha, the learned Standing Counsel would submit that the writ applicant cannot redress any grievance as it failed to follow the due procedure for distributing the TRAN – 1 credit to its branch offices/units in accordance with the existing law. In such circumstances, the transitional credit would not be available to the writ applicant. He would submit that the ISD mechanism facilitates distribution of credit of taxes paid to its units in the same tax period. The ISD itself cannot discharge any tax liability and remit the tax to Government account.

8. A Coordinate Bench of this Court had an occasion to consider an identical matter like the one on hand, in the case

of *M/s. Vishnu Aroma Pouching Pvt. Ltd. Vs. The Union of India*, Special Civil Application No.5629 of 2019, decided on 14.11.2019. We quote the relevant observations:

“2.8 Rule 88 (1) of CGST Rules provides for generating a Unique Identification Number at the common portal for each debit or credit to the electronic cash or credit ledger. In the petitioner’s case, this Unique Identification Number (UIN) has also been generated for each of the challans. On the challan, the UIN is shown as ‘BRN’, that is, Bank Reference Number, the numbers being BRN 374991396 and BRN 374995316. All these numbers appear on the challans generated on the common portal (viz. the System), thereby signifying that the petitioner has paid the tax for August, 2017.

2.9 For completing the transaction, a Unique Identification Number relating to discharge of any liability is to be indicated in the corresponding entry in the electronic liability register. This procedural requirement of sub-rule (2) of rule 88 of the CGST Rules is, however, not completed in the petitioner’s case because of a glitch and ultimate crashing down of the common portal system in September, 2017.

2.10 All the above referred details about CPIN, CIN and even BRN appear on both the challans dated 19.9.2017; and thus the payment of tax aggregating to Rs.114.51 crores (rounded off) in cash towards the petitioner’s tax liability of August, 2017 is not under any dispute or doubt. The remaining amount of Rs.14.12 crores (rounded off) has been paid from ITC legally available to the petitioner, and debit entry of such ITC has also been made in the credit ledger of the petitioner. In the present proceedings, there is no dispute or doubt about payment of tax from ITC also.

2.11 It is further the case of the petitioner that the entire tax liability of August, 2017, having been discharged by 19th September, 2017, the petitioner proposed to furnish GSTR-3B on 20th September, 2017; but the common portal was not running properly due to heavy load because millions of registered persons were trying to upload their returns and the common portal which was introduced only in July, 2017 was not capable of taking such a huge load. Consequently, the petitioner’s efforts to upload GSTR-3B on 20th September, 2017 failed. On the next day, that is, on 21st September, 2017, the System crashed. Due to this unfortunate turn of events, the System accepted the petitioner’s GSTR-3B on 21.9.2017, but the information and details in all the columns of this return were shown as “zero”, though the payment of tax liability of the month had also been fully made by the petitioner.

2.12 Since GSTR-3B was uploaded on the common portal in the above manner, the requirement of sub-rule (2) of rule 88 of the CGST Rules, that is, indicating the Unique Identification Number relating to discharge of the liability in the corresponding entry in the electronic liability register has not been made in the System, which operates on its own, namely that, the petitioner has no access to make any entry, etc. in the System, and consequently not in the electronic liability register maintained under rule 85 of the CGST Rules also.

2.13 The petitioner, therefore, immediately informed the Assistant Commissioner in charge of its unit vide a letter dated 21.9.2017 about the payment and discharging duty liability for August, 2017 but inability to correct GSTR-3B return submitted on GSTM portal. The office of the Assistant Commissioner has made an endorsement on this letter advising the petitioner to approach the Help Desk to sort out the issue.

2.14 According to the petitioner, for August, 2017, it has thereafter furnished a return in form GSTR-1 as prescribed under rule 59(1) of the CGST Rules. All required details, including the tax liability and also its payment, are furnished under GSTR-1 by the petitioner.

2.15 The petitioner's representative thereafter visited the Help Desk at GST Bhavan, Ambawadi, and informed the Officers there about the above difficulty in respect of GSTR-3B. The petitioner's representative was, however, informed that any error in GSTR-3B would be taken care of when GSTR-2 and GSTR-3 were filed by the concerned registered person. A copy of Circular No.7/7/2017-GST dated 1st September, 2017 issued by the Government of India was also handed over to the petitioner's representative, wherein correction of erroneous details furnished in Form GSTR-3B was referred to. It is the case of the petitioner that as it has already furnished GSTR-1, it was eagerly waiting for GSTR-2 and GSTR-3 to be prescribed by the Government; but neither was the format of GSTR-2 and GSTR-3 prescribed, nor was any provision made for such return for a few months.

2.16 The petitioner's case was not that of furnishing erroneous details in GSTR-3B, but it was a case where the System had crashed. But since the petitioner was assured of correction of GSTR-3B, the petitioner waited for form or format of GSTR-2 and GSTR-3 being published, and also the period that may be prescribed by the Government for filing such returns so as to correct and rectify GSTR-3B of August, 2017. It is the case of the petitioner that it has complied with the procedural requirements and also the obligation of discharging tax liability for the subsequent months, that is, September, 2017 and thereafter in accordance with the law during this period when the petitioners were waiting for the Government's further circular and clarification about GSTR-2 and GSTR-3. But, in December, 2017, the Government decided that time period for filing of GSTR-2 and GSTR-3 for July, 2017 to March, 2018 would be worked out by a Committee of Officers, and accordingly, the previous Circular dated 1.9.2017 was kept in abeyance till such time. Thus, the assurance given to the petitioner by the Officers manning the Help Desk did not result in any positive action or development. The return in form GSTR-3B for August, 2017 continues to have all information and details as "zero", and consequently, the entry about discharging tax liability of August, 2017 in the petitioner's electronic liability register as required under rule 88(2) of the CGST Rules is still not made.

2.17 In this view of the matter, the petitioner had been continuously approaching all the responsible officers of Ahmedabad-North Commissionerate, and also the higher officers like the Chairman of the Central Board of Indirect Taxes and Customs as well as the Assistant Director in charge of the System of the common portal. The petitioner has submitted letters and representations in writing to the Chief Commissioner of Ahmedabad Zone, the Assistant Director of DGGSTI, the Deputy Commissioner of CGST in charge of the petitioner's factory, the Nodal Officer in charge of the Nodal Office for sorting out system related

problems, the Assistant Commissioner in charge of Systems at Gandhinagar, the Member of the Board at New Delhi etc.; and in all, twenty three request letters and representations have been made by the petitioner in writing from 21.9.2017 to 1.3.2019. However, the response received by the petitioner till the first week of March, 2019 was only by way of three letters. A letter dated 21.8.2018 has been received by the petitioner from the Assistant Commissioner (System) advising the petitioner to follow up the matter with the jurisdictional Commissioner who is the Nodal Officer. A letter dated 10.9.2018 has been received by the petitioner from the Joint Commissioner requesting the Commissioner of CGST and Central Excise, Ahmedabad-North for information about action taken on the petitioner's representations; and a letter dated 28.10.2018 (wrongly shown as dated 28.8.2018) from the Deputy Commissioner in charge of the petitioner's factory informing the petitioner that the matter stands referred to the higher formation.

2.18 It is the case of the petitioner that the jurisdictional Deputy Commissioner has, vide the above letter dated 28.10.2018, advised the petitioner to follow the instructions/guidelines mentioned in paragraph 3 of Circular dated 29.12.2017 (Annexure-"F" to the petition). But it is clarified by the Government of India at paragraph 3 of the circular that the GST Council has decided to keep in abeyance the scheme of correction/amendment of errors in GSTR-3B at the time of filing GSTR-2 and GSTR-3. Consequently, though advised by the jurisdictional Deputy Commissioner to do so, the petitioner could not have followed the instructions/guidelines mentioned in paragraph 3 of this circular. As a result of the petitioner's follow up for about eighteen months, now a decision has been communicated with the approval of the Principal Commissioner, Ahmedabad-North, informing the petitioner that the Senior Vice President, GSTN has informed that functionality of modifying GSTR-3B is not available because there is no such process defined under law. The petitioner is advised to follow the instructions/guidelines mentioned in paragraph 3 of the Circular dated 29.12.2017. On enquiry by the petitioner as to in what manner instructions/guideline mentioned in paragraph 3 of the above referred Circular should be followed, the petitioner has been informed by the Officers that the petitioner's case would fall under Common Error-I of Annexure to the above Circular, and as clarified for cases of "Liability was under reported", the petitioner should pay the liability of tax with interest.

2.19 In the aforesaid factual background, the situation that still prevails is that a formal entry in the petitioner's electronic liability register for discharging tax liability of August, 2017 is still not made in the system though the petitioner had paid the entire tax liability of August, 2017 by way of cash payment aggregating to Rs.114.51 crores (rounded off) and that of Rs.14.12 crores (rounded off) from legally availed ITC. Though true and full information about the tax liability and also its payment in respect of August, 2017 stands reflected in the return furnished in Form GSTR-1, the other return in Form GSTR-3B shows zero liability and also nothing about discharging the actual tax liability of August, 2017, the Unique Identification Number relating to discharge of such tax liability in August, 2017 is still not made in the System, that is, on the common portal, in respect of the petitioner's electronic liability register. It is the case of the petitioner that despite having paid the entire tax liability of August, 2017 within the time limit prescribed under law, as the petitioner is still considered as a defaulter as regards tax liability of August, 2017 exposing the petitioner to several consequences and there is no proper response from the respondents, the

petitioner has approached this court seeking the reliefs noted hereinabove.

3. During the pendency of the present petition, the petitioner had filed an application being Civil Application No.1 of 2019 in the captioned writ petition, praying that the petitioner be permitted to file manually GSTR-3B for August, 2017 with the correct and true details and the respondents be directed to accept and acknowledge such GSTR-3B manually filed by the petitioner for August, 2017. The petitioner further sought a direction to the respondents to give effect to the details contained in GSTR-3B for August 2017 filed manually and to indicate discharge of the petitioner's GST liability for August 2017 in the electronic liability register as contemplated under rule 88(2) of the CGST Rules, 2017.

4. Vide order dated 7.5.2019, the application was allowed by permitting the petitioner to file GSTR-3B for August, 2017 manually, with correct and true details and the respondents were directed to accept and acknowledge such GSTR-3B manually filed by the petitioner for August, 2017.

5. Pursuant to the above order, the respondents, in an affidavit dated 3.9.2019, had taken a stand that in the interest of smooth functioning of GST, it is desirable and necessary that manual filing is not permitted. However, subsequently the learned senior standing counsel for the respondents had submitted before the court that in the case of the petitioner, while filing GSTR-3B for September, 2019 in October, 2019, the tax amount of August, 2017 may also be added and thereupon the details submitted in electronic GSTR-3B shall be accepted by the portal. The learned senior standing counsel also submitted that only the principal amount of tax liability of August, 2017 may be declared in such return, and not the liability of interest, subject to the outcome of the petition. Accordingly, it appears that the petitioner was permitted to file FORM GSTR-3B for September, 2019 with taxes payable for August, 2017 and the same has been accepted by the system and, accordingly, the amount of tax payable for August, 2017, which was lying with the designated bank has now been credited to the Government account and the taxes payable are now shown as nil.

6. In the light of the above events, the principal grievance voiced in the petition, therefore, no longer survives. However, the issue regarding liability to pay interest for eighteen months from 21.9.2017 to October 2019 at a substantially high rate of 18% per annum still remains to be addressed.

7. Mr. Paresh Dave, learned advocate for the petitioner invited the attention of the court to the averments made in the memorandum of petition, to point out that it is only after issuing the letter dated 7.3.2019, on the petitioner's inquiry, that the respondents informed the petitioner that its case would fall in the appropriate table set out in Circular No.26/26/2017-GST dated 29.12.2017. Reference was made to paragraph 7 of the affidavit-in-reply filed on behalf of the respondents No.1, 2, 3 and 4, to point out that it is admitted therein that the petitioner was under a bona fide belief that since the issue would be resolved after filing GSTR-1 it did not enter into any e-mail or correspondence with any other authority. Referring to the affidavit-in-rejoinder filed by the petitioner in response to the affidavit-in-reply filed on behalf of the respondents, it was pointed out that in paragraph 5 thereof, it has been specifically averred by the petitioner that it was never informed in the past for paying tax amount with interest for August, 2017; and that the petitioner might have done that if such

advice had been given in the past. Reference was made to the press releases, etc. for the glitches in the network delaying GST filing, to point out that the same also showed that there were reports of returns showing zero figures. It was submitted that despite the aforesaid categorical averments made in the affidavit-in-rejoinder as well as the aforesaid facts being pointed out in the further affidavit filed on behalf of the respondents, there is no denial or dispute in respect of the aforesaid facts. It was submitted that even at the time when the civil application was filed by the petitioners praying to be permitted to file the GSTR manually, which came to be decided on 7.5.2019, no suggestion or submission was made on behalf of the respondents for filing such return with only the principal amount of tax without showing interest for the intervening period for releasing the amount lying in the designated bank. It was pointed out that such suggestion was made by the respondents only on the 16th or 17th of October, 2019 and the suggestion was implemented by the petitioner on 20th October, 2019. It was pointed out that accordingly, the amount of Rs.114.51 crores and ITC of Rs.14.12 crores lying with the designated bank all along from 19.9.2017 has not been accepted as payment of tax for August, 2017. It was submitted that this could have been done in September, 2017 if the respondents had not given the petitioner to understand that the error would be corrected in view of the Circular dated 1.9.2017. It was pointed out that even during the course of hearing of the application/petition also, the respondents had submitted that the petitioner was asked to pay tax with interest only in March, 2019 after issuing the letter dated 7.3.2019, which was about eighteen months, after creating an impression which gave rise to a bona fide belief on the part of the petitioner that the issue would be sorted out in due course. It was submitted that the petitioner had duly filed the return for the month of August, 2017 and had also deposited that tax payable for such period; however, on account of glitches in the system such amount could not be credited to the Government account. It was submitted that the petitioner had thereafter immediately approached the respondent authorities for resolving the issue; however it was on account of the default on the part of the respondent authorities that the error could be corrected only in October, 2019. It was submitted that on account of default on the part of the respondents, the petitioner should not be saddled with the liability of paying excessive interest at the rate of 18% for the intervening period between the date of filing of the return and the filing of form GSTR-3B in October, 2019.

8. This court has also heard Mr. Nirzar Desai, learned senior standing counsel for the respondents, who has reiterated the averments made in the affidavit in reply filed on behalf of the respondents.

9. From the facts noted hereinabove, it is apparent that the petitioner had uploaded the return for August, 2017 within the period provided therefor. The petitioner paid an amount aggregating to Rs.114,51,11,746/- in cash towards the tax liability and also made payment of Rs.14,12,35,762/- in the credit ledger as ITC utilisation; however the same was not entered in the petitioner's electronic liability register as provided under rule 88(2) of the CGST Rules. The situation therefore, is that though the petitioner had discharged the tax liability aggregating Rs 128.63 crores (rounded off), such liability was not shown as discharged in the electronic liability register only on account of glitches and crashing of the system on 20th and 21st September, 2017. Consequently, despite the fact that the petitioner had discharged the tax liability in time, it was still treated as a defaulter because all the figures in GSTR- 3B for August 2017 are zeros owing to

system failure.

10. As noticed earlier, immediately thereafter, the petitioner had contacted the respondent authorities and had made attempts to do whatever, it was told. However, it was only by the communication dated 7.3.2019, that the petitioner was informed that the Central Board of Excise and Customs had issued Circular No. 26/26/2017-GST dated 29.12.2017 wherein it has been specified that the tax payer may adjust the amount not paid or short paid or excess paid in the GSTR-3B of the previous month in the return of the following tax period. It was further stated that the petitioner was already requested to follow the instruction/guideline mentioned in paragraph 3 of Circular No.26/26/2017 dated 29.12.2017 by the Deputy Commissioner vide their office letter dated 28.10.2018.

11. In terms of the above Circular No.26/26/2017-GST dated 29.12.2017, the petitioner was required to report the additional liability in the return of the next month and pay tax with interest. In effect and substance, therefore, the petitioner was required to pay interest at the rate of 18% for a period of eighteen months on the tax liability which it had already discharged on time, without there being any default on its part.

12. From the facts as emerging from the record, it is manifest that despite the fact that the petitioner had approached them at the earliest point of time, the respondent authorities maintained silence for a considerable period of time and did not provide remedial measures till directed by this court. The errors in uploading the return were not on account of any fault on the part of the petitioner but on account of error in the system. In these circumstances, it would be unreasonable and inequitable on the part of the respondents to saddle the petitioner with interest on the amount of tax payable for August 2017, despite the fact that the petitioner had discharged its tax liability for such period well within time.

13. The respondents, in paragraph 19 of their affidavit-inreply, have submitted that CIN is generated after deposit of money by the petitioner for the purpose of payment of tax. CIN is generated by the authorised banks/ Reserve Bank of India (RBI) when payment is actually received by such authorised banks or RBI, which then is seen as credit balance in the electronic cash ledger of the petitioner. In response to such submission made on behalf of the respondents, the learned advocate for the petitioner invited the attention of the court to the averments made in paragraphs 5.4 and 5.5 of the petition, wherein it has been stated that when any payment is made by an assessee by internet banking, a number for the challan for making payment is generated, which is known as Challan Portal Identification Number (CPIN). For two challans dated 19.9.2017, through which the petitioner has paid a total sum of Rs.114.51 crores (rounded off), such CPINs have been generated on the common portal, and such numbers appear on the challans with other details. CPIN for payment of taxes by the petitioner are 17092400195007 and 17092400195744. On successful credit of the amount to the concerned Government account maintained in the authorised bank, a Challan Identification Number is generated by the collecting bank, and the same is indicated in the challan as laid down under subrule (6) of rule 87 of the CGST Rules. In the petitioner's case, such CINs have been generated, and such Challan Identification Numbers have been recorded on the challans also, which are HDFC17092400195007 and HDFC17092400195744. These facts have not been disputed by the respondents. Thus, it is evident that the amount in question had actually been deposited by the petitioner on 19.9.2017 for the

purpose of payment of tax and was received in the bank designated by the respondents. Moreover, it is an admitted fact that Rs.114.51 crores (rounded off) paid in the designated bank on 19.9.2017 and also input tax credit of Rs.14,12,35,762/- debited on 19.9.2017 have been lying to the credit of the GST Department, and the petitioner has not utilised this sum aggregating to Rs.128.63 crores (rounded off) for discharging any other tax liability.

14. Thus, the petitioner had duly discharged the tax liability of August, 2017 within the period prescribed therefor; however, it was only on account of technical glitches in the System that the amount of tax paid by the petitioner for August 2017 had not been credited to the Government account. Hence, the interests of justice would best be served if the declaration submitted by the petitioner in October, 2019 along with the return of September, 2019 is treated as discharge of the petitioner's tax liability of August, 2017 within the period stipulated under the GST laws. Consequently, the petitioner would not be liable to pay any interest on such tax amount for the period from 21.9.2017 to October, 2019.

15. In the light of the above discussion, the petition succeeds and is, accordingly, allowed. It is held that the declaration submitted by the petitioner in October, 2019 along with the return of September, 2019 shall be treated as the petitioner having discharged its tax liability of August, 2017 within the period stipulated under the GST laws. The petitioner shall not be liable to pay any interest on such tax amount for the period from 21.9.2017 to October, 2019. Rule is made absolute accordingly, with no order as to costs."

9. We are of the view that the respondents cannot raise their hands in despair saying that it is not possible to correct or take care of the technical glitches. The writ applicant herein has been running from pillar to post requesting the respondents to provide a solution and take care of the technical error and glitch that occurred as regards furnishing the GSTR – 6 return for recording and distributing the ISD credit of Rs.20,52,989/-. As usual, there is no response at the end of the GSTN. The writ applicant is not allowed to distribute the ISD credit of Rs.20,52,989/- as the same has not been recorded, reported and declared in the GSTR – 6 return.

10. Mr. Tripathi is right in his submission that the credit is a tax paid by the registered person on input transactions and therefore, the credit of such tax already paid to the credit of the Central Government is a vested right of the person. Such

vested right cannot be defeated on account of any irregularity in the system evolved by the Government.

11. For all the foregoing reasons, this petition succeeds and is hereby allowed. The respondents are directed to allow the writ applicant to furnish manually the GSTR – 6 return with details of the ISD credit of Rs.20,52,989/- and also permit distribution of such credit to the constituents of the writ applicant. Let this entire exercise be undertaken within a period of six weeks from the date of the receipt of writ of this order.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

NEHA

