

Summary Order in FORM DRC-07, dated 16-3-2022 in exercise of powers under Rule 100/Rule 142(5) confirming interest demand of Rs. 61,45,233.94/- (IGST Rs. 3,17,399.96 + CGST Rs. 28,99,045.40 + SGST Rs. 29,28,788.58) for the period April, 2019 to November, 2019 for purported delay in filing of GSTR-3B returns under Section 39(1) of the JGST Act read with Rule 61 (5) of the JGST Rules, 2017 for the period April, 2019 to November, 2019. The Respondent No. 2 before passing the said adjudication Order dated 14-3-2020 did not issue any show cause notice as mandated under Section 73 of the JGST Act, 2017, and on this ground the Petitioner-Company challenged the order dated 14-3-2020/DRC-07, dated 16-3-2020 before the Joint Commissioner of State Tax (Appeals), Ranchi U/s. 107 of the JGST Act.

The Joint Commissioner of State Tax (Appeals) Ranchi *vide* 1st Appellate Order dated 16-1-2021 accepted the contentions of the Petitioner and allowed the appeal filed by the Petitioner and determined the interest as NIL. The First Appellate Authority held that the Respondent No. 2 should have started proceedings in accordance with provisions of Section 73 of the JGST Act before creating the interest demand following judgments of this Court in *Godavari Commodities Ltd. v. UOI* [2020 (33) G.S.T.L. 16 (Jhar.) = [2020] 114 taxmann.com 563 (Jhar.)] and *Mahadev Construction Co. v. UOI* [2020 (36) G.S.T.L. 343 (Jhar.) = [2020] 116 taxmann.com 262/[2020] 81 GST 271 (Jharkhand)].

However, after more than 20 months of passing of 1st Appellate Order dated 16-1-2021 by the Joint Commissioner of State Tax (Appeal) Ranchi, the Respondent No. 3, initiated fresh proceeding by way of the impugned Show Cause Notice bearing Ref. No. 1131 under Section 73(1) read with Section 75(12) of the JGST Act, 2017 read with Rule 142(1) of the JGST Rules, 2017 demanding interest of Rs. 45,59,626.86/- for the same period *i.e.*, April, 2019 to November, 2019, and for the same cause of action which was already adjudicated and Petitioner's appeal was allowed by the First Appellate Authority. In the impugned Show Cause Notice interest of Rs. 6,63,025/- is also additionally demanded for the month of March, 2020, a period, which is not covered in the 1st Appellate Order dated 16-1-2021.

The Petitioner *vide* its reply dated 21-9-2022 challenged the jurisdictional legality and authority of the Respondent No. 3 in issuing the impugned show cause notice dated 16-9-2022. The Respondent No. 2, after issuance of impugned first Show Cause Notice dated 16-9-2022, issued the impugned Second Show Cause Notice dated 20-10-2022 bearing Ref. No. 1510 along with Summary of Show Cause Notice dated 22-10-2022 in Form GST-DRC-01 in purported exercise of powers conferred under Section 73 of the JGST Act, 2017 read with Rule 142(1) of the JGST Rules, 2017 for the second time, for the same period *i.e.*, April, 2019 to November, 2019, proposing demand of interest of Rs. 37,49,732.75/- (IGST Rs. 2,05,233.63 + CGST Rs. 18,58,308.02 + SGST Rs. 16,86,191.10) under Section 50 for the same cause of action which is already adjudicated and first appeal is allowed *vide* First Appellate Order dated 16-1-2021 and has attained finality. In this impugned show cause notice the period of March, 2020 is not included.

5. Mr. K. Kurmy, Learned Counsel for the petitioner assisted by Mr. N.K. Pasari and Ms. Sidhi Jalan submits that the initiation of fresh proceedings once again by the impugned Show Cause Notices (Annexure-1 & Annexure 2) by the Respondent No. 3 & Respondent No. 2 for the same cause of action (except month of March, 2020 in Annexure-1) even after the First Appellate Order dated 16-1-2021 which was decided in favour of the Petitioner and has attained finality; is wholly without jurisdiction and bad in law and procedure and is also against the principles of *res judicata* contemplated in Section 11 of the Code of Civil Procedure, 1908.

Learned Counsel further submits that in the case of *UOI v. Vicco Laboratories* reported in 2007 (218) E.L.T. 647 (S.C.) = 2008 taxmann.com 520 (SC), it is held that reopening concluded assessment amounts to abuse of the process of law. It is held that when there is abuse of the process of law, writ under Article 226 would be maintainable. The Hon'ble Apex Court in the case of *Duncans Industries Ltd. v. CCE* reported in 2006 (201) E.L.T. 517 (S.C.) = 2006 taxmann.com 1489 (SC), has held that for the same period two assessments are not permissible in law.

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6. With respect of demand for March, 2020, Learned Counsel contended that the demand of interest of Rs. 6,63,025/- in the impugned first Show Cause Notice dated 16-9-2022 (Annexure-1) is erroneous and is contrary to State GST Notification No. 451, dated 29-7-2017 as amended by Notification No. 31/2020-State Tax, dated 25-6-2020 and corresponding Central GST Notification No. 13/2017-Central Tax, dated 28-6-2017 as amended by Notification No. 31/2020-C.T., dated 3-4-2020, whereby the rate of interest for the month of February, 2020 to April, 2020 was reduced to Nil for the first 15 days of delay and 9% thereafter in place of 18%, for registered persons having annual turnover above Rs. 5.00 Cr.

It has been contended that since the annual turnover of the Petitioner is above Rs. 5.00 Cr.; hence, they are entitled to the benefit of said notification. Considering the above extension of limitation for filing of GSTR-3B returns and reduction in the rate of interest, amount of Interest demand should have been Rs. 12,791.44 only for the month of March, 2020 as against demand of interest of Rs. 6,63,026/- in the impugned Show Cause Notice dated 16-9-2022 for the month of March, 2020. Relying upon the aforesaid contentions, Mr. Kurmy submits that both the impugned show cause notices deserve to be quashed.

7. Mr. Ashutosh Anand, Learned AAG-III for the revenue submits that the returns filed by the petitioner for the period 2019-2020 were duly scrutinized by the concerned Assessing Officer. Based on available documents on records, an order No. 22, dated 14-3-2020 under the JGST Act, 2017 was passed as the same found mentioned in Summary Order mentioned in Form GST DRC-07, inclusive of interest and penalty for an amount of Rs. 61,45,233.94. It is categorically mentioned in Form DRC-07 that the reason for passing the said order is for 'delay in filing the return'. Further, the Form GST DRC-07, dated 16-3-2020 specifies that the demand is created under other section of GST Act and not what petitioner is submitting that said order was passed under Section 73 of the JGST Act.

Learned Counsel further submits that after perusing the Appellate Authority order dated 16-1-2021, the concerned authority after finding that the proceeding under 73 of the JGST Act is inevitable, a Show Cause Notice along with Form DRC-01 having reference No. 1131, dated 16-9-2022 was issued to the petitioner. Subsequently, looking into the importance of the matter the Circle In-charge DCST, West Circle, Ranchi took over the matter and issued a Show Cause Notice in Form DRC-01 vide process No. 1510, dated 20-10-2022 to the petitioner. Since the matter was taken over by the D.C.S.T., hence he had to issue fresh Show Cause Notice to provide the taxpayer opportunity of being heard. Consequently, the D.C.S.T. issued the notice in DRC-01 along with show cause notice.

He contended that as on date the proceeding as initiated under Section 73 of the JGST Act by the 'Assistant Commissioner of State Tax' has been taken over by the Deputy Commissioner of State Taxes, West Circle, Ranchi and only one proceeding under Section 73 of the JGST Act is going on. The simultaneous proceeding under Section 73 before two (2) authorities for the same period was an administrative process, which occurred due to reason above stated.

He lastly submits that the instant writ application is devoid of any merit and deserves to be dismissed.

8. Having heard Learned Counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein; it is evident that the first Appellate Order dated 16-1-2021 passed by the Joint Commissioner of State Tax (Appeals), Ranchi was accepted by the department and no further appeal was filed and thus; the same has attained finality and therefore the same issue or cause of action cannot be re-agitated in a fresh proceeding as the same is contrary to settled proposition of law.

It further transpires that Section 107(16) of the JGST Act provides that every 1st appellate order passed thereunder shall be final unless subjected to Revision under Section 108, appeal to Tribunal under Section 113 or appeal to High Court under Section 117 or appeal to Supreme Court under Section 118 of the JGST Act. In the instant case, since the 1st appellate order is not subjected

to Section 108, Section 113, Section 117, Section 118; thus, by virtue of sub-section (16) of Section 107, it has attained finality.

The Hon'ble Apex Court in the case of *CCE v. Prince Gutkha Ltd.* reported in (2015) 15 SCC 775 = 2015 (322) E.L.T. 165 (S.C.) has held that adjudicating authority dropping earlier demand accepting explanation of Assessee, issuance of second show cause notice on same cause of action, not permissible. Paragraph-3 of the said order is extracted herein below :

"3. Insofar as the issue of clandestine removal of goods by Respondent 1 is concerned, we find that on the statement of Respondent 5 given earlier, the adjudicating authority had dropped the proceedings accepting the explanation furnished. In view thereof, CESTAT has held that there could not have been second show cause notice on the same cause of action. In this behalf we do not find any error in the order passed by CESTAT."

In the case of *CCE v. Gujarat State Fertilisers and Chem. Ltd.* reported in (2008) 15 SCC 46 = 2008 (229) E.L.T. 9 (S.C.) it is held by the Hon'ble Apex Court that order of the Tribunal has attained finality due to non-filing of appeal by the department. Hence, appeal on the same issue is not maintainable which has already attained finality. Paragraph-9 of the said order is quoted herein below :

"9. On the second contention raised by the respondent, namely, that as per rule 57B(1) (iv), the Modvat credit was available on the inputs used for generation of electricity or steam, used for manufacture of final products or for any other purpose, within the factory of production, the Tribunal decided the case in favour of the assessee relying upon a decision of the Tribunal in *Raymond Ltd. v. CCE* [(2000) 37 RLT 447 (CEGAT)], wherein it has been held that the Modvat credit would be available on inputs used to manufacture steam which was in turn used for manufacture of exempted or nil duty rated final product or for any other purpose. It is stated before us that no appeal has been preferred by the Revenue against the decision in the aforesaid case. The same has thus become final."

9. At this stage it is pertinent to mention here that under Section 112(3) of the JGST Act, the Commissioner may, on his own motion or upon request from the Commissioner of Central Tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or under the Central Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed, for determination of such points arising out of said order as may be specified by the Commissioner in his order. Further, Section 112(4) of the JGST Act provides that where in pursuance of an order under Section 112(3) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it is an appeal made against the order under Section (11) of Section 107.

The Respondents in the instant case being not aggrieved by the First Appellate Order dated 16-1-2021, did not challenge the same or availed remedies available under the law but accepted the same and allowed the same to attain finality; thus now they cannot be allowed to turn around and re-agitate a matter afresh which has already come to an end by due process of law.

10. It is also relevant to indicate that Section 107(11) envisages that the 1st Appellate Authority cannot remand the matter back. In such circumstances, to bypass the embargo of law, restarting fresh proceeding by lower authorities amounts to doing something indirectly which cannot be done directly. As per Section 107(11) of the JGST Act, no power is vested on the First Appellate Authority to remand the matter back to the assessing authority that passed the order. Therefore, since there is no power vested in the first appellate authority to remand the matter back to the Respondent No. 2 or Respondent No. 3 to initiate a *de novo* proceeding; the first appellate authority accordingly and rightly so, did not remand the matter back to the Respondent No. 2 or Respondent No. 3 for initiation of any fresh proceedings. Under the circumstances the Respondent No. 2 and/or the Respondent No. 3 are not vested with power to issue the impugned Show Cause Notices.

Having regard to the discussions made herein above the Revenue cannot re-agitate and

issue fresh show cause notices again for the same cause of action covering same period against which the Order passed by the First Appellate Authority has been accepted by the Respondents and same has attained finality. The actions of the Respondent No. 2 and the Respondent No. 3 is therefore bad in law and is without jurisdiction and is further hit by the principles of *res judicata* and is clearly not permissible under the law. As stated herein above, after passing of the 1st appellate order, only course available with the Respondents were to challenge the first Appellate Order dated 16-1-2021 before the Appellate Tribunal under Section 112 of the JGST Act, if at all aggrieved, and therefore, the impugned Show Cause Notices are wholly without jurisdiction, without authority of law and also barred by principles of *res judicata*.

11. So far as the demand of interest with respect of March, 2020 is concern; the demand of interest of Rs. 6,63,025/- in the impugned first Show Cause Notice dated 16-9-2022 (Annexure-1) is also erroneous and is contrary to State GST Notification No. 451, dated 29-7-2017 as amended by Notification No. 31/2020-State Tax, dated 25-6-2020 and corresponding Central GST Notification No. 13/2017-Central Tax, dated 28-6-2017 as amended by Notification No. 31/2020-C.T., dated 3-4-2020. As per Notification No. 31/2020-State Tax, dated 25-6-2020 and Notification No. 31/2020-C.T., dated 3-4-2020 as a COVID-19 relaxation Measures, the rate of interest for the month of February, 2020 to April, 2020 was reduced to *Nil* for first 15 days of delay and 9% thereafter in place of 18%, for registered persons having annual turnover above Rs. 5.00 Cr. Since the annual turnover of the Petitioner is above Rs. 5.00 Cr.; hence, they are entitled to the benefit of said notification.

Considering the above extension of limitation for filing of GSTR-3B returns and reduction in the rate of interest, amount of Interest demand should have been Rs. 12,791.44/- only for the month of March, 2020 as against demand of interest of Rs. 6,63,026/- in the impugned Show Cause Notice dated 16-9-2022 for the month of March, 2020. Thus; the petitioner is liable to pay interest of Rs. 12,791.44/- only for the month of March, 2020 as against demand of interest of Rs. 6,63,026/-. Thus, the petitioner is directed to pay the same amount within a period of two weeks, if not paid, from the date of receipt/production of copy of this Order.

12. In view of the aforesaid findings and the judicial pronouncements, both the impugned show cause notices, are hereby, quashed and set-aside. As a result, the instant writ application is allowed in the manner indicated herein above. I.A., if any, also stands disposed of.



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(2024) 16 Centax 329 (Telangana)/2024 (84) G.S.T.L. 146 (Telangana) [28-02-2024]

(2024) 16 Centax 329 (Telangana)

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

P. SAM KOSHY AND N. TUKARAMJI, JJ.

RAYS POWER INFRA PRIVATE LIMITED

Versus

SUPERINTENDENT OF CENTRAL TAX

Writ Petition No. 298 of 2024, decided on 28-2-2024

GST : Where during GST audit certain discrepancies were pointed out by audit team and assessee immediately cleared entire tax liability along with interest which was accepted in final audit report, initiating proceedings under Section 74 thereafter and raising demand was in excess of jurisdiction and same was to be set aside.

Demand - Tax or ITC not involving fraud, etc. - Proceedings after discharge of tax liability - Period July, 2017 to March, 2019 - Accepting findings of provisional audit of returns filed, assessee immediately paid entire additional tax along along with interest - Final audit report accepted such payments - However, authority passed impugned order and raised demand - HELD : A bare perusal of Section 73(5) of CGST Act, 2017 indicate that in event assessee clears all tax liability along with interest at any day prior to issuance of show cause notice, they would not be liable for any further additional taxes by way of penalty and interest - Sub-section (1) of Section 73 ibid permits a taxpayer to even clear wrongly availed ITC and also wrongly utilized ITC and it is this what is alleged against assessee of having wrongfully and irregularly availed ITC - In instant case, assessee paid entire tax liability along with updated interest much before final audit report was published - Therefore, action on part of respondent authority in initiating show cause proceedings under Section 74 ibid and passing of impugned order was in excess of jurisdiction and same was to be set aside - Since challenge to impugned order in original and show cause notice at first instance itself was not sustainable in eye of law in terms of sub-sections (5) and (6) of section 73 ibid, assessee could not be forced to undergo entire process of litigation under statute once again when issuance of show cause notice itself was per se bad and since it was a case of excess of jurisdiction exercised by authorities, assessee had a right to avail a writ remedy rather than undergoing process of appeal, revision etc. under statute [Section 73 read with Section 74 of Central Goods and Services Tax Act, 2017/Telangana Goods and Services Tax Act, 2017]. [paras 18 and 19]

Petition allowed in favour of assessee

[Order per : P. Sam Koshy, J.] - This Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India praying this Court to issue a writ, direction or order, more particularly, one in the nature of a Writ of Mandamus by declaring the impugned order in Original No.1/2023-24-GST (Supdt.), dated 15.11.2023, and also the consequent demand raised in Form DRC-07 bearing reference No.ZD361223018542R, dated 11.12.2023, as void, illegal, arbitrary, without jurisdiction and without authority of law and to set aside the same.

2. Heard Mr.M. Naga Deepak, learned counsel for the petitioner and Mr.Dominic Fernandes, learned Standing Counsel for Central Board of Indirect Tax (C.B.I.C.), for the respondents.

3. Vide the impugned order, the 1st respondent has confirmed a demand of Rs. 92,160/- (CGST Rs. 46,080/- + SGST Rs. 46,080/-) towards irregularly availed Input Tax Credit (I.T.C.) on ineligible supplies. Further, the authorities concerned have also confirmed demand of notice towards irregularly availed I.T.C. on common services used for providing taxable services and exempted supplies of Rs. 2,34,700/-. In addition, there was also a demand for interest amount of Rs. 6,642/- and Rs. 39,100/- in terms of Section 50 of the Central Goods and Services Tax Act, 2017 (for short, 'the C.G.S.T. Act') r/w corresponding similar provisions of the Telangana Goods and Services Tax Act, 2017 (for short, 'the T.G.S.T. Act') and Section 20 of the Integrated Goods and Services Tax Act, 2017 (for short, 'the I.G.S.T. Act'). In addition, there was also imposition of penalty in terms of Section 74(9) r/w Section 122(2)(b) of C.G.S.T. Act and the corresponding provision under the T.G.S.T. Act and Section 20 of the I.G.S.T. Act. The period of dispute as regards tax is from July, 2017 to March, 2019.

4. The petitioner herein is a company engaged in the business of generation of electricity through solar plants and is a registered establishment under the C.G.S.T. Act and I.G.S.T. Act. The return filed by the petitioner for the period July, 2017 to March, 2019 was subjected to G.S.T. audit by the 3rd respondent. The summary of the audit findings was communicated to the petitioner on 14.10.2021. Accepting the findings of the audit, the petitioner immediately paid the entire additional tax that was required to be paid along with interest. The demand was made on 28.10.2021. Subsequent to the entire aforesaid payment being made, the final audit report was passed on 10.11.2021. In the final audit report, the auditors have accepted the payment made by the petitioner and the same was received by the department. Despite the entire payment being made, the 1st respondent issued show-cause notice dated 20.04.2022 under Section 74(1) of the C.G.S.T. Act. Thereafter, the petitioner submitted a reply to the said show-cause notice on 04.09.2023 highlighting the facts to the concerned authorities in respect of the entire tax liability having been discharged along with interest on 28.10.2021 and stating that the entire irregularly availed I.T.C. already stood reversed for dropping of the show-cause proceedings. Subsequently, the petitioner was provided with personal hearing and after hearing the petitioner, the authorities concerned have passed the impugned order confirming the demand raised which has led to filing of the present writ petition.

5. Learned counsel for the petitioner contended that initiation of the proceedings under Section 74(1) of the C.G.S.T. Act by the respondents at the first instance is itself bad in law and the entire proceedings and the final order passed by the 3rd respondent is liable to be set aside / quashed.

6. Referring to the provision of Section 73 of the C.G.S.T. Act, particularly relying upon Sub-Section (5) of Section 73 of the C.G.S.T. Act, the learned counsel for the petitioner contended that the case of petitioner squarely falls within the purview of Section 73(5) and for this reason itself, the entire show-cause proceedings and the final order under challenge in this writ petition deserves to be set aside / quashed. He further contended that when the petitioner, at the first instance, was given the findings of the audit before the final audit report was submitted on 14.10.2021 and after scrutinizing the same, immediately the petitioner cleared the entire tax payable by him in respect of the I.T.C. that was availed by the petitioner wrongly. The petitioner also paid the entire interest amount on 28.10.2021 itself. According to learned counsel for the petitioner, the show-cause notice in the instant case was issued only on 20.04.2022. Therefore, the proceedings drawn by the respondents would get hit by proviso to Section 73(5) and the writ petition to the aforesaid extent deserves to be allowed. He further submitted that the authorities concerned have wrongly initiated proceedings under Section 74 which otherwise would not be sustainable particularly when the petitioner falls within the purview of proviso to Section 73(1) and 73(5) of the C.G.S.T. Act.

7. Per contra, Mr. Dominic Fernandes, learned Standing Counsel for Central Board of Indirect Tax, appearing on behalf of the respondents, vehemently contended that the case of petitioner being not a simple wrongful availment of I.T.C., but a deliberate, willful act on the part of petitioner with an intention of evading tax, and therefore, it is a case which would fall squarely within the purview of Section 74(1) where there is an element of misstatement made by the petitioner, and also an element of suppression of fact, till it was noticed in the course of audit, which on the part of petitioner amounts to a fraudulent act. According to him, it is not an inadvertence on the part of petitioner insofar as having wrongly availed the I.T.C., and that it was also not a case where the petitioner was ignorant of the fact that the I.T.C. that has been availed by the petitioner was in respect of certain ineligible supplies and also in respect of taxable supplies and supplies which are otherwise exempted from G.S.T.; and it was in this context that proviso to Section 74(1) was invoked and the impugned proceedings had been drawn; and therefore, contended that the impugned order does not warrant any interference.

8. Learned Standing Counsel for the respondents further contended that under challenge herein is an order which is otherwise appealable under the statute by preferring an appeal under Section 107 of the Act; and therefore, the writ petition deserves to be dismissed on the ground of there being a statutory, alternative remedy available to the petitioner and the grounds raised by the petitioner could also be agitated before the appellate authority.

9. The point of issue for consideration in the present writ petition is as to whether the petitioner having been discharged his entire tax liability along with the accrued interest immediately upon the finding of the audit team having been made available to the petitioner. Could the respondent authorities have subsequently initiated a proceeding under Section 74 of the C.G.S.T. Act.

10. The fact which needs to be considered is that admittedly there was some wrongful availment of I.T.C. by the petitioner in respect of certain exempted tax. This fact was highlighted in the provisional audit report which has been made available to the petitioner by the audit team. The said provisional report was served upon the petitioner on 14.10.2021. The petitioner accepting the said finding immediately discharged the tax liability along with the accrued interest on 28.10.2021, i.e., within a span of around two weeks time, which was much thereafter that the petitioner's audit report was published on 10.11.2021 and where in the audit report itself it has been highlighted that the petitioner has since cleared off all the tax liability and has also paid the relevant interest also up to date. Admittedly, the show cause notice was thereafter has been issued much thereafter on 20.04.2022.

11. At this juncture, it would be relevant to take note of the contents of Section 73 of the C.G.S.T. Act. The relevant portion for adjudication of the present writ petition is being reproduced hereunder:

"73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts.

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice

along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under subsection (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded."

12. A bare perusal of Section 73(5) of the C.G.S.T Act gives a clear indication that the framers of the law were very clear in mind that in the event if the assessee the tax payer clears all the tax liability along with interest at any day, prior to the issuance of show cause notice, they would not liable for any further additional taxes by way of penalty or interest. For this purpose, the provisions of Section 73(1) and Section 73(5) both have to be read together. The reading of the aforesaid two provisions would give a clear indication that Sub-Section (5) refers to even those payments which have been cleared by the taxpayers which were otherwise termed as wrongfully availed I.T.C.

13. What further needs to be appreciated is that on plain reading of the provisions of Section 73(1) of the C.G.S.T Act, particularly Sub-Sections 5 to 8 which are already reproduced in the preceding paragraphs, the law makers were very clear in their mind so far as expecting the taxpayer to clear the unpaid tax or reversal of the wrongfully availed I.T.C. at the earliest in order to provide stringent coercive recovery measures including imposition of penalty. A plain reading of Sub-Section (1) of Section 73 gives an inference of the liability of a taxpayer being in respect of (i) any tax that has not been paid or (ii) any tax which is short paid (iii) any erroneously refunded tax (iv) where ITC has been wrongly availed (v) the I.T.C. having utilized for any reason other than fraud or willful misstatement or suppression of facts in order to evade payment of tax. The said by itself would show how exhaustive was Sub-Section (1) of Section 73 and the intentions of the law makers incorporating all those unpaid or wrongly availed tax benefit.

14. Further reading of other Sub-Sections, i.e. Sub-Sections (5) to (8) would again force this Court to draw the only inference, that of, it is this very nature of wrongly availed tax or any other tax which has not been paid or erroneously refunded. In respect of this very category of wrongfully availed or wrongly retained tax from the taxpayer immediately upon them coming to know about it either by his own self-assessment or the tax as ascertained by the proper officer.

15. Admittedly in the instant case, the show cause notice was issued on 20.04.2022, however, during the course of the audit itself certain discrepancies were pointed out by the audit team. Even much before of the final audit report being published, the petitioner is said to have paid the entire tax liability along with the updated interest on 28.10.2022. In the said circumstances, we are of the considered opinion that the case of the petitioner is one which that would fall strictly under Sub-Sections (5) and (6) of Section 73 where it has been emphatically laid down by the law makers that any person chargeable with tax, if he pays the amount of tax along with the interest payable there on, proper officer upon receipt of such information shall not initiate any further proceedings under Sub-Section (1) and all the proceedings shall have to be deemed to be concluded.

16. As regards the contention of the learned Standing Counsel that the show cause notice in the instant case has been issued under Sub-Section (1) of Section 74 and not under Sub-Section (1) of Section 73 of the C.G.S.T Act, this Court is of the firm view that Section 74 would get attracted only in the event of their being strong materials available on record to show that the petitioner had played fraud or there was any misstatement made by him and there being any suppression of fact.

17. We are also of the considered opinion that applicability of Section 74 would come into play only if the conditions stipulated in Section 73 has not been met with by the taxpayer i.e. to say in the event if the conditions stipulated in Sub-Section (5) of Section 73 is not honored by the taxpayer in spite of the tax liability being brought to his knowledge. Then in the said circumstances, Section 74 would automatically attract and in those circumstances, the contention of the learned Senior Standing Counsel would be acceptable. Further, keeping in view the provisions of Sub-Sections (5) and (6), it will go to establish that once having discharged their tax liability also by paying interest on the said tax payable, then no further proceedings could be drawn for the same tax any further. This view of the Bench stands further fortified from reading of Sub-Section (8) as well which again gives an indication that if necessary compliance in respect of tax as is stipulated under Sub-Sections (1) and (3) is paid along with interest even after issuance of show cause notice, even then the penalty cannot be levied and the notice proceedings shall be deemed to have been concluded.

18. Keeping in view the aforesaid statutory provision as it stands so far as Section 73 and the various Sub-Sections of the said Section, the element of fraud or misstatement or suppression of fact with an intention of evading tax which is halved upon by the learned Senior Standing Counsel would arise as has been stated earlier only in the event if the taxpayer fails to meet the provisions of Sub-Section (5) of Section 73. The attempt of the learned Senior Standing Counsel trying to bring the conduct of the petitioner within the purview of fraud, misstatement and suppression of fact would not be sustainable and the said contention stands negated by the Bench simply for the reason that Sub-Section (1) of Section 73 permits a taxpayer to even

clear wrongly availed I.T.C. and also wrongly utilized I.T.C. and it is this what is alleged against the petitioner of having wrongfully and irregularly availed I.T.C.

19. In view of the same, we are of the considered opinion that the action on the part of the respondents in initiating the show cause proceedings under Section 74 and passing of the impugned order dated 15.11.2023 both would be in excess of their jurisdiction and the same therefore deserves to be and are accordingly set-aside / quashed. As regards the contention of the learned Senior Standing Counsel so far as the availability of a statutory alternative remedy of appeal, we are of the firm view that since the challenge to the impugned order in original and the show cause notice at the first instance itself is not sustainable in the eye of law in terms of Sub-Sections (5) and (6) of Section 73. The petitioner cannot be forced to undergo the entire process of litigation under the statute once when the issuance of show cause notice itself was per se bad and since it is a case of excess of jurisdiction exercised by the respondents, the petitioner has a right to avail a Writ remedy rather than undergoing the process of appeal, revision etc. under the statute.

20. The writ petition accordingly stands allowed. No costs.

21. Consequently, miscellaneous petitions pending if any, shall stand closed.

■■



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(2023) 5 Centax 75 (P&H.)/2023 (74) G.S.T.L. 74 (P&H.) [30-01-2023]

(2023) 5 Centax 75 (P&H.)

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RITU BAHRI AND MANISHA BATRA, JJ.

NEW HANUMAT MARBLES

Versus

STATE OF PUNJAB

C.W.P. Nos. 10560 and 10568 of 2021, decided on 30-1-2023

GST : Where ex parte adjudication order and summary thereof in Form GST DRC-07 were passed without uploading summary of show cause notice in Form GST DRC-01 on Department's website, such orders were to be quashed; fresh orders were to be passed after uploading show cause notice on website in terms of rule 142(1) of CGST Rules, 2017 and affording opportunity of hearing to assessee

Adjudication order - Show Cause Notice - Ex parte adjudication order was passed under section 74(5) of Central Goods and Services Tax Act, 2017 without uploading summary of show cause notice in Form GST DRC-01 on Department's website - HELD : Order passed under said section 74(5) and summary thereof in Form GST DRC-07 without uploading show cause notice on Department's website in terms of rule 142(1) of Central Goods and Services Tax Rules, 2017 was not sustainable and, hence, it was to be quashed - Adjudicating authority should pass fresh orders after issuing show cause notice in terms of rule 142(1) ibid and afford opportunity of hearing to petitioner-assessee [Section 74 of Central Goods and Services Tax Act, 2017/Punjab Goods and Services Tax Act, 2017 and rule 142 of Central Goods and Services Tax Rules, 2017/Punjab Goods and Services Tax Rules, 2017]. [paras 2, 6, 8 to 10]

In favour of assessee

CASE CITED

Shyam Baba Edible Oils v. Chief Commissioner WP No. 16131 of 2020, decided on 19-11-2020 by Madhya Pradesh High Court —
Referred [Para 9]

REPRESENTED BY : Sandeep Goyal, Ms. Nazuk Singhal and Ishaan Loomba, Advocates for the Petitioner.
Saurabh Kapoor, Addl. A.G., for the Respondent.

[Order per : Ms. Ritu Bahri, J.]:- This order shall dispose of two writ petitions i.e. CWP-10560-2021 and CWP-10568-2021 as the issue involved in both the petitions is identical. For the sake of brevity, facts are being extracted from CWP-10560-2021.

2. The petitioner is seeking quashing of order in Form GST DRC-07 dated 12-3-2021 (Annexure P-6) and detailed order dated 10-3-2021 (Annexure P-7) passed under Section 74(5) of the Central GST Act/Punjab GST Act, 2017.

3. Heard learned counsel for the parties.

4. The short question for consideration in the present writ petition is as to whether show cause notice as contemplated under rule 142(1) of Central Goods and Services Tax Act, 2017 (for brevity "CGST Act") was mandatory to be followed before passing order under section 74(5) of the Central GST Act/Punjab GST Act, 2017.

5. Learned counsel for the petitioner, while referring to the impugned order dated 12-3-2021 (Annexure P-6) and detailed order dated 10-3-2021 (Annexure P-7) has argued that the search was conducted in the premises of the petitioner on 3-1-2018 and some documents were seized from his office. Thereafter, he was issued notice and his lawyer Naresh Chawla appeared and submitted his power of attorney on 21-6-2018. Mr. Naresh Chawla, Advocate also asked for copy of panchnama which was provided to him and he submitted his written submissions and the case was adjourned for 12-7-2018. In the order dated 10-3-2021 (Annexure P-7), it is further noticed that on 8-1-2021, this case was allotted to some other officer and that officer issued summon No. 1554 dated 19-2-2021 under section 70 of the Punjab/Central GST Act, 2017.

6. The grievance of the petitioner is that before passing final order on assessment, Rule 142(1) of the CGST Act is mandatory to be followed and GST DRC-01 has to be uploaded electronically on the website.

7. Learned counsel for the respondents has argued that summon/notice dated 19-2-2021 was given to the petitioner before initiating proceedings of passing assessment order under section 74(5) of the Central GST Act/Punjab GST Act, 2017. Thereafter, on 5-3-2021, another notice under sections 70, 50 and 74 of Central/Punjab GST Act, 2017 read with section 20 of IGST Act, 2017 was issued for 10-3-2021 and served through email (Annexure R-3). On 10-3-2021 also, the petitioner did not appear and, thereafter, the case was decided on merits.

8. Reply by way of affidavit of the State Tax Officer-cum-Proper Officer, Mobile Wing, Jalandhar has been filed on behalf of respondents No. 1 to 3 dated 6-8-2021 wherein, it has been emphasized that after the documents were seized, several notices (Annexure R-2) were issued to the petitioner to come and appear along with account books for verification, which he did not do so. The Authority had no option but to pass order since the petitioner, after affording several opportunities, did not appear and the case was disposed of on the basis of material available on the record and keeping in view the interest of the revenue.

9. Learned counsel for the petitioner has referred to the judgment passed by the High Court of Madhya Pradesh in *Shyam Baba Edible Oils v. Chief Commissioner* and another decided on 19-11-2020 in which the High Court of Madhya Pradesh was examining a case where show cause notice had been issued to the petitioner. However, as per the stand taken by the State, show cause notice dated 10-6-2020 was communicated to the petitioner on his email address. Reference was made to rule 142(1) of the CGST Act and it was observed that the only mode prescribed for communicating to the show cause notice/order is by way of uploading the same on the website of the revenue. The writ petition was allowed with liberty to the revenue to follow the procedure prescribed under rule 142 (1) of the CGST Act and impugned demand dated 18-9-2020 is struck down. Rule 142(1) of the CGST Act is reproduced as under:-

"142. Notice and order for demand of amounts payable under the Act.

(1) The proper officer shall serve, along with the

- (a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,
- (b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable."

10. In the facts of the present case, it is nowhere stated in the reply dated 6-8-2021 filed by the respondents that they had uploaded the notice on the website of the revenue as per Rule 142(1) of the CGST Act, 2017 before passing final orders dated 12-3-2021 and 10-3-2021 (Annexures P-6 and P-7). Hence, the present writ petitions are allowed and orders dated 12-3-2021 (Annexure P-6) and detailed order dated 10-3-2021 (Annexure P-7) are set aside and the matter is remanded back to the Assessing Officer to pass fresh orders after issuing notice as contemplated under rule 142(1) of the CGST Act and afford opportunity of hearing to the petitioner(s) in accordance with law.



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2024 (80) G.S.T.L. 225 (S.C.)IN THE SUPREME COURT OF INDIA
B.V. Nagarathna and Ujjal Bhuyan, JJ.**ASSISTANT COMMISSIONER OF STATE TAX, BALLYGUNJGE CHARGE***Versus***SUNCRAFT ENERGY PVT. LTD.***Petition for Special Leave to Appeal (C) Nos. 27827-27828 of 2023, decided on 14-12-2023*

Input Tax Credit - Reversal of credit - Non-Reflection of supplier's invoice in GSTR-2A - Period 2017-18 - Revenue reversed assessee's input tax credit alleging non-reflection of supplier invoices in GSTR-2A - Assessee argued compliance with Section 16 (2) of CGST Act, 2017 and payment to supplier via valid tax invoice - High Court by impugned order held that Press release dated 18-10-2018 clarifies GSTR-2A for taxpayer facilitation and does not impact input tax credit availing and that reversal of credit from buyer is optional except under exceptional circumstances of collusion, missing supplier, or lack of assets - It further held that assessee had clarified invoice possession and payment via bank statements and revenue failed to inquire on supplier despite clarifications - Show cause notice found faults with assessee's GSTR-1 and not with tax invoice possession or receipt and hence, revenue's action was deemed to be arbitrary - **HELD : SLP filed against impugned order was to be dismissed - Section 16 of Central Goods and Services Tax Act, 2017 - Section 16 of West Bengal Goods and Services Tax Act, 2017. [paras 8, 9, 10]**

Petition dismissed in favour of assessee**CASE REVIEW**Suncraft Energy (P.) Ltd. v. Assistant Commissioner, State Tax — 2023 (77) G.S.T.L. 55 (Cal.) = (2023) 9 Centax 48 (Cal.) — **SLP dismissed**

REPRESENTED BY : S/Shri Maninder Acharya, Sr. Advocate, Ms. Urmila Kar Purkayastha, Ms. Niharika Singh, Akash Mohan Srivastav, Ms. Srija Choudhury, Advocates and Ms. Madhumita Bhattacharjee, AOR, for the Petitioner.

Shri Ankit Kanodia, Ms. Megha Agarwal, Advocates, Ravi Bharuka, AOR, for the Respondent.

[Order]. - Delay condoned.

2. We have heard Learned Senior Counsel appearing for the petitioners.
3. Having regard to the facts and circumstances of this case(s) and the extent of demand being on the lower side, we are not inclined to interfere in these matters in exercise of our powers under article 136 of the Constitution of India.
4. The Special Leave Petitions are dismissed, accordingly.
5. Pending application(s), if any, shall stand disposed of.

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HIGH COURT FOR THE STATE OF TELANGANA : HYDERABAD**MAIN CASE NO: WRIT PETITION NO.10187 OF 2024****PROCEEDING SHEET**

SL. NO	DATE	ORDER	OFFICE NOTE
	19.04.2024	<u>SP, J & NTR,J</u> Sri Prakash Sha, learned counsel representing Sri A.V.A. Siva Kartikeya, learned counsel for the petitioner and Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC. Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC takes notice on behalf of respondent Nos.1 and 2 and prays for and granted two weeks time to file counter. Heard on the question of interim relief. Learned counsel for the petitioner submits that some allegations made in the show cause notice were replied by the petitioner and the competent authority agreed with such submission of the petitioner which is evident from Clause (f) at page number 112 of the order. However, the respondent No.2 held the petitioner responsible for certain allegations which are mentioned in Clause(f) aforesaid, which were not subject matter of the show cause notice. Apart from this, in a similar situation, Calcutta High Court in <i>Suncraft Energy Private Limited v. Assitant Commissioner, State Tax, Ballygunge Charge</i> {2023 (77) G.S.T.L. 55 (Cal.)} held that it is not proper to relegate the	Transferred to IO Folder before corrections.

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SL. NO	DATE	ORDER	OFFICE NOTE
		petitioner to avail the alternative remedy when breach is clear. Learned counsel for the petitioner further submits that Sub-clause (aa) of Sub-section (2) of Section 16 of CGST Act, 2017 became part of statute book only with effect from 01.01.2022 whereas in the instant case the alleged breach is prior to 01.01.2022. Thus, Sub-clause (aa) cannot be pressed into service. Considering the aforesaid and subject to hearing the other side, till next date of hearing, no coercive steps be taken against the petitioner pursuant to the order dated 26.12.2023. List this matter on 07.06.2024. _____ SP,J _____ NTR,J myk/tsr	

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HIGH COURT FOR THE STATE OF TELANGANA : HYDERABAD**MAIN CASE NO: WRIT PETITION NO.21532 OF 2024****PROCEEDING SHEET**

SL. NO	DATE	ORDER	OFFICE NOTE
	22.08.2024	<u>SP, J & RRN,J</u> Sri Lakshmi Kumaran Sridharan, learned counsel for the petitioner. Sri Swaroop Oorilla, learned Special Government Pleader for State Tax for respondent Nos.1, 2 and 6. Learned counsel for the petitioner submits that one of the points involved in this case is squarely covered in WP.No.10187 of 2024. This Court in WP.No.10187 of 2024 on 19.04.2024 granted the following order: “ Heard on the question of interim relief. Learned counsel for the petitioner submits that some allegations made in the show cause notice were replied by the petitioner and the competent authority agreed with such submission of the petitioner which is evident from Clause (f) at page number 112 of the order. However, the respondent No.2 held the petitioner responsible for certain allegations which are mentioned in Clause(f) aforesaid, which were not subject matter of the show cause notice. Apart from this, in a similar situation, Calcutta High Court in <i>Suncraft Energy Private Limited v. Assitant Commissioner, State Tax, Ballygunge Charge</i> {2023 (77) G.S.T.L. 55 (Cal.)} held that it is not proper to relegate the petitioner to avail the alternative remedy when breach is clear. Learned counsel for the petitioner further submits that Sub-clause (aa) of Sub-section (2) of Section 16 of CGST Act, 2017 became part of statute book only with effect from 01.01.2022 whereas in the instant case the alleged breach is prior to 01.01.2022. Thus, Sub-clause (aa) cannot be pressed into service.	Transferred to IO Folder before corrections.

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SL. NO	DATE	ORDER	OFFICE NOTE
		Considering the aforesaid and subject to hearing the other side, till next date of hearing, no coercive steps be taken against the petitioner pursuant to the order dated 26.12.2023.” In view of above said order and subject to hearing the other side, till the next date of hearing, no coercive steps be taken against the petitioner pursuant to the order dated 29.04.2024. List for analogous hearing with WP.No.10187 of 2024. _____ SP,J _____ RRN,J Sa/nvl	

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[3411]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR**

:PRESENT:

THE HONOURABLE SRI JUSTICE SUJOY PAUL

AND

**THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO
WRIT PETITION NO: 26763 OF 2024**

Between:

M/s. Ad Age Outdoor Advertising Private Limited, 8- 2- 293/82/L, Plot No. 219/A, Road No. 12, Banjara Hills, MLA Colony, Hyderabad- 500034. Represented by its Managing Director, Shri Syed Iqbal Mehdi, S/o. Late S Y Nawab, R/o. Plot No. 20B, Road No. 12, MLA Colony, Banjara Hills, Hyderabad- 500034

Petitioner

AND

1. The Assistant Commissioner of Central Tax, Banjara Hills Division, 3rd Floor, Amiso Plaza, Road No. 12, Banjara Hills, Hyderabad- 500034
2. The Superintendent SAG- 44, O/o. Commissioner of Central Tax and Customs, Hyderabad Audit- I Commissionerate, H. No. 3- 4- 118/1, NR, 1st Floor, Elegant Maharaja, Ramanthapur, Hyderabad- 500013
3. The Assistant Commissioner, Circle- 4, Hyderabad Audit- I Commissionerate, H. No. 3- 4- 118/1, NR, 1 Floor, Elegant Maharaja, Ramanthapur, Hyderabad- 500013
4. Central Board of Indirect Taxes and Customs, GST Policy Wing, New Delhi rep by its Commissioner
5. Union of India, Ministry of Finance, Represented by its Secretary, North Block, New Delhi- 110001

Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue writ, order, or direction more particularly one in the nature of a Writ of Mandamus declaring Impugned Order in Original no. 47/2024- 25 (GST)/BHD dated 30. 04. 2024 along with DRC 07 ZD3608240507909 dated 16. 08. 2024 passed by the Respondent No. 1 under the provisions of CGST/TGST Act, 2017 as being void, arbitrary, illegal, without jurisdiction, without authority of law apart from being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India, and to consequently set aside the same;

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay operation of impugned Order in Original no. 47/2024- 25 (GST)/BHD along with DRC 07 ZD3608240507909 dated 16. 08. 2024 issued by the Respondent No. 1.

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The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Sri. MD SHABAZ Advocate for the Petitioner, DOMINIC FERNANDES (senior standing counsel for CBIC) Advocate for the Respondent Nos.1 to 4, SRI. GADI PRAVEEN KUMAR(DY.SOLICITOR GEN. OF INDIA) for respondent No.5, the Court made the following.

ORDER:

Sri Venkata Prasad, learned counsel for the petitioner. Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC, for respondent Nos.1 to 4.

It is pointed out that one of the points involved in this matter is similar to the point involved in W.P.No.21532 of 2024, which has been entertained and interim protection has been granted by this Court.

Considering the aforesaid, Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC, who is present in the Court, is directed to take notice and file counter within four weeks. Rejoinder, if any, may be filed within two weeks therefrom.

List for analogous hearing with W.P.No.21532 of 2024.

Maintaining parity, as an interim measure, till next date of hearing, it is directed that no coercive steps be taken against the petitioner pursuant to the impugned order.

Sd/-MOHD. ISMAIL
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Assistant Commissioner of Central Tax, Banjara Hills Division, 3rd Floor, Amiso Plaza, Road No. 12, Banjara Hills, Hyderabad- 500034
2. The Superintendent SAG- 44, O/o. Commissioner of Central Tax and Customs, Hyderabad Audit- I Commissionerate, H. No. 3- 4- 118/1, NR, 1st Floor, Elegant Maharaja, Ramanthapur, Hyderabad- 500013
3. The Assistant Commissioner, Circle- 4, Hyderabad Audit- I Commissionerate, H. No. 3- 4- 118/1, NR, 1st Floor, Elegant Maharaja, Ramanthapur, Hyderabad- 500013
4. The Commissioner, Central Board of Indirect Taxes and Customs, GST Policy Wing, New Delhi
5. The Secretary, Ministry of Finance, Union of India, North Block, New Delhi- 110001 (1 to 5 by RPAD)
6. One CC to SRI. MD SHABAZ Advocate [OPUC]
7. One CC to SRI. DOMINIC FERNANDES (senior standing counsel for CBIC) Advocate [OPUC]
8. One CC to SRI. GADI PRAVEEN KUMAR(DY.SOLICITOR GEN. OF INDIA) Advocate [OPUC]
9. One spare copy

I.A No. _____ OF 2025
IN _____

.... Petitioner

... Respondents

For the reasons stated accompanying in the affidavit it is humbly prayed that this Hon'ble Court may be pleased to stay operation of impugned Order-in-Appeal bearing

OIA No. HYD-GST-SC-AP2-1123-24-25-GST dated 27-03-2025 passed by the Respondent No. 1 and/or pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Place: Hyderabad

Date: 20th 06-2025


Counsel for the Petitioner



DISTRICT: HYDERABAD
IN THE HIGH COURT FOR THE
STATE OF TELANGANA

I.A. No. of 2025

IN
W.P. No. of 2025

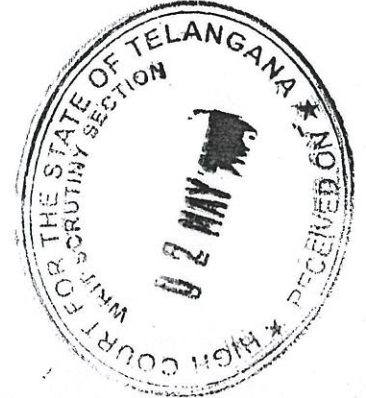
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DOCUMENTS
TIME 10 DAYS

SO

AR

STAY PETITION

FILED ON: 04-2025



FILED BY:

P V PRASAD ASSOCIATES (27435)
V GAYATRI PRIYA (26958)
V SAI AMIT (27346)
P VENKAT PRASAD
RASHMI
SHIVANI DIXIT

ADVOCATES

COUNSEL FOR PETITIONER

MEMORANDUM OF WRIT PETITION MISCELLANEOUS PETITION
(Filed Under Section 151 of C.P.C.)
IN THE HIGH COURT FOR THE STATE OF TELANGANA

I.A No. _____ OF 2025
IN _____

W.P. No. OF 2025

BETWEEN

M/s. Nilgiri Estates,
2nd Floor, 5-4-187/3 and 4, Soham Mansion,
MG Road, Secunderabad, Telangana – 500 003
Represented by Managing Partner,
Shri. Soham Satish Modi, S/o. Shri. Satish Modi,
Aged 56 years, R/O. Plot No. 280, Road NO. 25,
Jubilee Hills, Hyderabad – 500 034

.... Petitioner

-VS-

1. The Additional Commissioner of Central Tax (Appeals II),
Hyderabad, GST Bhawan, Basheerbagh, Hyderabad - 500 004
2. The Assistant Commissioner of Central Tax,
Secunderabad GST Division, Salike Senate,
D. No. 2-4-416 & 417, Ramgopalpet, M.G. Road,
Secunderabad – 500 003
3. The Commissioner of Central Tax,
Secunderabad Commissionerate, GST Bhavan,
Basheerbagh, Hyderabad - 500 004
4. The Additional Commissioner of Central Tax,
Secunderabad GST Commissionerate, GST Bhavan,
Basheerbagh, Hyderabad-500 004

5. Union of India
Ministry of Finance,
Represented by its Secretary,
North Block, New Delhi-110 001

... Respondents

For the reasons stated accompanying in the affidavit it is humbly prayed that this Hon'ble Court may be pleased to permit the Petitioner to file application under amnesty

scheme without additional tax payment arising out of the impugned OIA No. HYD-GST-SC-AP2-1123-24-25-GST dated 27-03-2025 passed by the Respondent No. 1 and/or pass such further or other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Place: Hyderabad

Date: 18/06-2025


Counsel for the Petitioner

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011

DISTRICT: HYDERABAD

**IN THE HIGH COURT FOR THE
STATE OF TELANANGA**

I.A. No. of 2025

IN
W.P. No. of 2025

PERMISSION PETITION

FILED ON: 06-2025

FILED BY:

P V PRASAD ASSOCIATES (27435)
V GAYATRI PRIYA (26958)
V SAI AMIT (27346)
P VENKAT PRASAD
RASHMI

ADVOCATES

COUNSEL FOR PETITIONER