

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

TUESDAY, THE TWENTY SIXTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE APARESH KUMAR SINGH
AND
THE HONOURABLE SRI JUSTICE G.M. MOHIUDDIN**

WRIT PETITION NO: 24398 OF 2025

Between:

Star Truck service, 8-82/8/A1, Bye Pass Road, Bommakal, Karimnagar, Karimnagar, Telangana, 505001, Represented by its Partner, Shri Akbar Mohammed, S/o Rajmohammed, Aged 58 years, R/o. 2-10-1032, flat 306, Poladi satya residency, jyothinagar, Karimnagar, Telangana- 505001

...PETITIONER

AND

1. The Superintendent of Central tax, Karimnagar Urban Range, Karimnagar Division, Medchal Commissionerate, Hanuman Nagar, Karimnagar, Telangana-505 001
2. The Assistant Commissioner of Central Tax, Karimnagar Division, 8-7-296/1 Hanuman Nagar, Karimnagar, Telangana - 505 001
3. ICICI Bank Limited, Kukatpally branch, H. No. 8-7-331/1, Plot No.111, Ganesh Nagar, Kothirampur Kaman to Hyderabad Road, Karimnagar-505001 Represented by its manager
4. 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 a writ, order, or direction or a plea one like a writ of mandamus declaring that. a) Impugned SCN in Form GST DRC-01 bearing reference no. ZN3605240519598 dated 28-05-2024 read with SCN No. 68/2024-25/GST dated 28-05-2024 and consequential Order in form GST DRC-07 bearing reference No. ZD360824136946V dated 30-08-2024 read with MO No. 165/2024-25(GST) dated 20-08-2024 read with order in passed by the Respondent No.1 under the provisions of CGST/TGST Act, 2017 as being void, arbitrary, illegal, without jurisdiction, violative of the principles of natural justice apart from being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India, and to consequently set

aside the same and pass such further or other order(s) as this Honourable Court may deem fit and proper in the circumstances of the case. b) Impugned recovery notice issued in Form DRC-13 C No. IV/19/02/2024-Arrears (PF-1) dated 25-06-2025, issued by the Respondent No.2 to the Respondent No. 3 under the provisions of CGST/TGST Act, 2017 as being void, arbitrary, illegal, without jurisdiction, violative of the principles of natural justice 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 2025

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 suspend the attachment of the bank issued in Form DRC-13 C No. IV/19/02/2024-Arrears (PF-1) dated 25-06-2025, issued by the Respondent No.2 to the Respondent No.3.

IA NO: 2 OF 2025

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 form GST DRC-07 bearing reference No. ZD360824136946V dated 30-08-2024 read with OIO No. 165/2024-25(GST) dated 20-08-2024 passed by the Respondent No.1.

Counsel for the Petitioner: M/s P V PRASAD ASSOCIATES

**Counsel for the Respondent Nos.1 & 2: SRI DOMINIC FERNANDES, senior
standing counsel for CBIC**

Counsel for the Respondent No.3: SRI N.PRAVEEN REDDY

Counsel for the Respondent No.4: DEPUTY SOLICITOR GENERAL OF INDIA

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH

AND

THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN

Writ Petition No.24398 of 2025

ORDER:

Heard Mr.P.Venkata Prasad, learned counsel appearing for the petitioner, Mr.Dominic Fernandes, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs, appearing for respondents No.1 and 2 and Mr.N.Praveen Reddy, learned Standing Counsel for ICICI Bank Limited, appearing for respondent No.3.

2. The impugned Order-In-Original (OIO) dated 20.08.2024 for the financial year 2024-25 has confirmed the demand of Rs.4,38,566/- towards short payment of GST, comprising CGST and SGST, under the provisions of Section 73(9) of the Central Goods and Services Tax Act, 2017 (for short, 'the CGST Act'), interest under Section 50(1), and imposed penalty of Rs.43,856/- under Section 73(9). It has also confirmed the demand of Rs.11,374/- for wrongful availment of Input Tax Credit (ITC) under Section

73(9), interest under Section 50(3) and further penalty of Rs.40,000/- under Sections 73(9) and 122(2)(a) of the CGST Act read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (for short, 'the IGST Act').

3. A show cause notice dated 28.05.2024 under Section 73 of the CGST Act was issued to the petitioner, a supplier, for short payment of tax while filing GSTR-3B when compared to GSTR-1 for the period from April, 2019 to March, 2020. The petitioner submitted a reply to the said show cause notice and was also allowed personal hearing.

4. The learned Assessing Officer, *vide* Order-In-Original dated 20.08.2024, found the petitioner liable to pay penalty equivalent to 10% of amount payable by the taxpayer or Rs.10,000/- whichever is higher, on account of short payment of tax in GSTR-3B, as the tax paid through GSTR-3B did not match with the tax liability in GSTR-1 for the corresponding period. Rule 61 of the Central Goods and Services Rules, 2017 mandates that the tax payment should be in accordance with the details furnished in GSTR-1. The tax should be paid after reconciliation with the tax reported at the time of GSTR-3B. Since there was

shortfall in tax payment when compared to what was declared in GSTR-1, petitioner was required to pay penalty for short payment.

5. Learned counsel for the petitioner submits that the shortfall was on account of difference in erroneous filing of outward supplies in GSTR-1 in B2C column which resulted in short payment of CGST of Rs.4,38,566/-.

6. Learned Assessing Officer observed that the petitioner, a registered firm, was required to rectify such error or omission in the manner prescribed within the period prescribed. It failed to rectify the error in the manner prescribed under Section 37 of the CGST Act. Therefore, its reply was not satisfactory.

7. Learned counsel for the respondents submits that in the instant case, the petitioner filed GSTR-1 which had a difference with its GSTR-3B. It is not a case that the petitioner was a purchaser, but, as a supplier, it failed to deposit the taxes and the statement containing the details of deposit of tax is not reflected in GSTR-2A. Therefore, the impugned OIO does not suffer from any error.

8. In respect of second allegation, the learned Assessing Officer, while referring to availment of ITC in GSTR-3B for the period 2019-20 as compared to GSTR-2A, found that the taxpayer had availed excess ITC of Rs.11,374/-. During that period, ITC reflected was Rs.12,04,300/- but it availed ITC of Rs.12,15,674/-, more than what was reflected in its own GSTR-2A. This was liable to be reversed under Section 73 of the CGST Act with applicable interest under Section 50(3) and with penalty under Section 122(2)(a) thereof. Therefore, the penalty of Rs.40,000/- was imposed, upon confirmation of Rs.11,374/- as wrongful availment of ITC.

9. The Writ Petition has been preferred after almost one year of passing of the OIO. Learned counsel for the petitioner submits that the delay in preferring an appeal under Section 107(1) of the CGST Act or approaching this Court, is on account of rectification exercise being carried out in respect of another OIO dated 22.08.2024 for the same period on the subject of irregular availment of ITC in contravention of Section 16(4) of the CGST Act.

10. We have given due consideration to the submissions of the learned counsel for the parties.

11. As noted above, the error in short payment of GST compared to the GSTR-1 against the taxes received by the petitioner as supplier itself was open for rectification in the prescribed format within a time limit up to 20.10.2020 which the petitioner failed to undertake. Therefore, the impugned proceedings were initiated against the petitioner.

12. We find that the learned Assessing Officer, after taking note of the relevant provisions of the CGST Act for filing of returns and its rectification and the fact that the petitioner made short payment of GST without undertaking any rectification within the time prescribed and in the manner prescribed, has rightly proceeded to hold that the petitioner is liable to pay tax of Rs.4,38,566/- along with interest and penalty. Moreover, since there was an excess availment of ITC to the tune of Rs.11,374/- beyond the ITC reflected in petitioner's own GSTR-2A, the learned Assessing Officer rightly proceeded to impose penalty thereupon, since by that time, the excess availed ITC was already deposited by the petitioner.

13. The Writ Petition has been filed beyond the period of limitation and extended period for condonation of delay in

terms of Section 107(4) of the CGST Act. On that count also, the Writ Petition should not be entertained, in view of the judgment rendered by the Apex Court in the case of **Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited**¹. Therefore, we do not find any reason to interfere with the impugned OIO.

14. The instant Writ Petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

SD/- B. REKHA RANI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. One CC to M/s. P V PRASAD ASSOCIATES, Advocate [OPUC]
2. One CC to SRI DOMINIC FERNANDES, senior standing counsel for CBIC [OPUC]
3. One CC to N.PRAVEEN REDDY, Advocate [OPUC]
4. One CC to DEPUTY SOLICITOR GENERAL OF INDIA [OPUC]
5. Two CD Copies

PSK.

GJP

pmc.

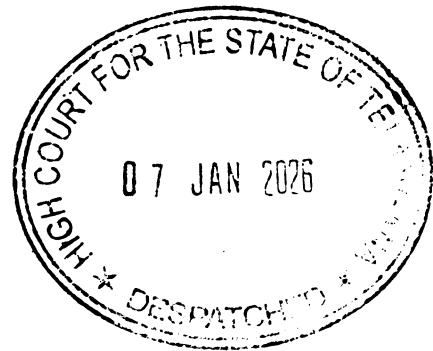
¹ (2020) 19 SCC 681

HIGH COURT

DATED:26/08/2025

ORDER

WP.No.24398 of 2025



**DISMISSING THE WRIT PETITION
WITHOUT COSTS**

⑦ PMA.
22/12/25