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

THURSDAY, THE THIRD DAY OF APRIL
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND

THE HONOURABLE SMT JUSTICE RENUKA YARA

WRIT PETITION NO: 9847 OF 2025

Between:

Dilip Super Market, Represented by Partner Mr. Anil Kumar Agarwal 29/3rt, ground floor, Vijay Nagar Colony, Hyderabad, Telangana, 500057.

.....PETITIONER

AND

1. Superintendent of Central Tax, Towlichowki Range, Abids GST Division, Akira Shikhara Plaza, Hyderabad- 500001.
2. Assistant Commissioner,, Central Tax, Review Section, Hyderabad GST Commissionerate.
3. Kotak Mahindra Bank, Represented by Branch Manager, 3-6-140, Ward No.6, Ground Floor, Netaji Bhavan, Himayathnagar, Hyderabad 500029.
4. Union of India,, Through the Principal Secretary to the Government, Ministry of Finance, Department of Revenue, Udyog Bhavan, 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 particularly one in the nature of a Writ Of Mandamus or any other appropriate writ declaring) Order in Original bearing No. 02/2023-24-GST dated 22.12.2023 issued along with Form DRC-07 dated 16.05.2024 vide Reference No. ZD3605240297572 by Respondent No.1 under Section 74 of the CGST Act and consequent bank attachment dated 21.03.2025 issued under Section 79 of the CGST Act by Respondent No.3 as being a nullity

and non-est in law on account of not having any signature in DRC-07 dated 16.05.2024 and also being contrary to Rule 142 of CGST Rules, 2017 and illegal in accordance with the scheme of the GST Acts.

I.A.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 bank attachment notice issued by 3rd Respondent for recovery of the disputed amounts dated 21.03.2025 under Section 79 of the CGST Act, pending disposal of the writ petition as otherwise the Petitioner will be put to severe loss and hardship.

I.A.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 the Order in Original bearing No. 02/2023-24-GST dated 22.12.2023 issued along with Form DRC-07 dated 16.05.2024 vide Reference No. ZD3605240297572 under Section 74 of the CGST Act by Respondent No.1 and any coercive steps against the Petitioner by the Respondents.

Counsel for the Petitioner : SRI PRAVEEN K. NAIR

Counsel for the Respondent Nos.1 & 2 : SRI DOMINIC FERNANDES (SENIOR STANDING COUNSEL FOR CBIC)

Counsel for the Respondent No.3 : --

Counsel for the Respondent No.4 : SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR GENERAL OF INDIA

The Court made the following ORDER

THE HON'BLE THE ACTING CHIEF JUSTICE SUJOY PAUL

AND

THE HON'BLE SMT. JUSTICE RENUKA YARA

WRIT PETITION No.9847 of 2025

ORDER: *(Per the Hon'ble the Acting Chief Justice Sujoy Paul)*

Sri Praveen K Nair, learned counsel for the petitioner and Sri Dominic Fernandes, learned Standing Counsel for CBIC, for respondent Nos.1 and 2.

2. Heard on admission.

3. This writ petition assails the Order-in-Original dated 22.12.2023.

4. The present writ petition is filed on 28.03.2025.

5. Learned counsel for the petitioner submits that Form GST DRC-07 dated 16.05.2024 is an unsigned document.

6. On a specific query from the Bench regarding the delay in assailing the order dated 22.12.2023, learned counsel for the petitioner has drawn our attention only to paragraph No.6 of the writ affidavit. The learned counsel for the petitioner has not explained the delay in assailing the order dated 22.12.2023 after considerable long time. The petitioner had a remedy of appeal against the Order-in-Original dated 22.12.2023 within a period of ninety days. The Apex Court in

Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited[1] in paragraph No.19 opined as under:-

> "**19.** We may now revert to the Full Bench decision of the Andhra Pradesh High Court in *Electronics Corpn. of India Ltd.* v. *Union of India*, 2018 SCC OnLine Hyd 21 : (2018) 36 GST 22] , which had adopted the view taken by the Full Bench of the Gujarat High Court in *Panoli Intermediate (India) (P) Ltd.* v. *Union of India* [*Panoli Intermediate (India) (P) Ltd.* v. *Union of India*, 2015 SCC OnLine Guj 570 : AIR 2015 Guj 97] and also of the Karnataka High Court in *Phoenix Plasts Co.* v. *CCE* [*Phoenix Plasts Co.* v. *CCE*, 2013 SCC OnLine Kar 10432 : (2013) 298 ELT 481] . The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction — by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. **However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in *ONGC* [*ONGC* v. *Gujarat Energy Transmission Corpn. Ltd.*, (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would**

[1] (2020) 19 SCC 681

render the legislative scheme and intention behind the stated provision otiose."

(Emphasis supplied)

7. In view of the aforesaid judgment of the Apex Court, the petitioner could have filed the writ petition within the statutory period of limitation for filing the petition. The petition is filed with sufficient amount of delay and without there being any explanation for delay. For this reason alone, we are not inclined to interfere in the matter.

8. The admission is declined and the writ petition is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

SD/-K.AMMAJI
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Superintendent of Central Tax, Towlichowki Range, Abids GST Division, Akira Shikhara Plaza, Hyderabad- 500001.
2. The Assistant Commissioner, Central Tax, Review Section, Hyderabad GST Commissionerate.
3. The Kotak Mahindra Bank, Represented by Branch Manager, 3-6-140, Ward No.6, Ground Floor, Netaji Bhavan, Himayathnagar, Hyderabad 500029
4. Union of India,, Through the Principal Secretary to the Government, Ministry of Finance, Department of Revenue, Udyog Bhavan, North Block, New Delhi-110001
5. One CC to SRI PRAVEEN K. NAIR, Advocate [OPUC]
6. One CC to SRI DOMINIC FERNANDES (SENIOR STANDING COUNSEL FOR CBIC) Advocate [OPUC]
7. One CC to SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR GENERAL OF INDIA, Advocate (OPUC)
8. Two CD Copies

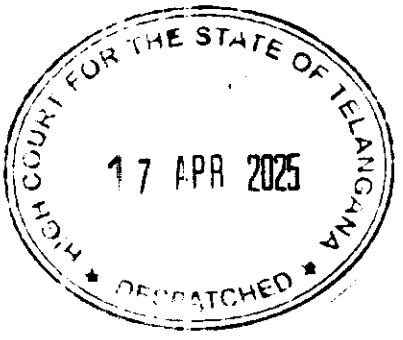
SA
LS

HIGH COURT

DATED:03/04/2025

ORDER

WP.No.9847 of 2025



DISMISSING THE W.P

WITHOUT COSTS.

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S.B

15/4/25