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

TUESDAY,THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HONOURABLE SMT JUSTICE RENUKA YARA

WRIT PETITION NO: 36631 and 36644 OF 2024

WRIT PETITION NO: 36631 OF 2024

Between:

M/s. Computer Task Information Technology Services Private Limited, 1-2-271/3F, above Mc Donalds, Sree Arcade, S.D. Road, Secunderabad - 500003, rep. by its Director Mr. Mathisuthanan .K.

...PETITIONER

AND

1. The Assistant Commissioner of Customs and Central Tax, Malkajgiri GST Division, Medchal GST Commissionerate, 8-2-77/3 and 4, 2nd Floor, Aditya Towers, Sri Sai Enclave, Old Bowenpally, Secunderabad - 500011.
2. The Union of India, rep. by its Secretary (Finance), Ministry of Finance, North Block, New Delhi -110001.
3. The Bank of America, Salarpuria Windsor, 5th Floor, B-Wing, No.-3, Ulsoor Road, Bangalore-560042, Karnataka State, Rep. by its Branch Manager.

...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 an appropriate Writ, Order or Direction, more particularly in the nature of MANDAMUS declaring that the impugned Order-in-Original No. 146/2023-ST, dated 29-09-2023 (wrongly typed as 29-09-2022 in the impugned order), passed by the First Respondent for the Second Half Year of the Financial Year 2016-17 (i.e., for October, 2016 to March, 2017) under the Service Tax Act (Chapter V of the Finance Act, 1994) is barred by Limitation and that the extended period of Limitation under the Proviso to S. 73 (1) is not applicable, and even otherwise contrary to law and unsustainable and illegal 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 main writ petition, the High Court may be pleased to grant stay of operation of the "Notice to a third person under Section 79(1)(c)" dated 08-11-2024, issued by the First Respondent to the Third Respondent Bank pending disposal of the main writ petition.

IA NO: 2 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 grant stay of all further proceedings, including recovery of tax, interest, penalty and late fee, pursuant to the impugned Order-in-Original No. 146/2023-24, dated 29-09-2023 (wrongly typed as 29-09-2023 in the impugned Order), passed by the First Respondent for the Second Half Year of the F.Y. 2016-17 (i.e., from October, 2016 to March, 2017) under the Service Tax Act (Chapter V of the Finance Act, 1994),

Counsel for the Petitioner: SRI. G NARENDRA CHETTY

Counsel for the Respondent No.1:SRI DOMINIC FERNANDES (senior standing counsel for CBIC)

Counsel for the Respondent No.2: SRI GADI PRAVEEN KUMAR DY. SOLICITOR GENERAL OF INDIA

Counsel for the Respondent NO.3: ----

WRIT PETITION NO: 36644 OF 2024

Between:

M/s. Computer Task Information Technology Services Private Limited, 1-2-271/3F, above Mc Donald's, Sree Arcade, S.D. Road Secunderabad - 500003, rep. by its Director Mr. Mathisuthanan .K.

...PETITIONER

AND

1. The Assistant Commissioner of Customs and Central Tax, Malkajgiri GST Division, Medchal GST Commissionerate, 8-2-77/3 and 4, 2nd Floor, Aditya Towers, Sri Sai Enclave, Old Bowenpally, Secunderabad - 500011.
2. The Union of India, rep. by its Secretary (Finance), Ministry of Finance, North Block, New Delhi - 110001.
3. The Bank of America, Salarpuria Windsor, 5th Floor, B-Wing, No.-3, Ulsoor Road, Bangalore-560042, Karnataka State, Rep. by its Branch Manager.

...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 an appropriate Writ, Order or Direction, more particularly in the nature of MANDAMUS declaring that the impugned Order-in-Original No. 145/2023-ST, dated 29-07-2023, passed by the First Respondent for the First Half Year of the Financial Year 2016-17 (i.e., for April, 2016 to September, 2016) under the Service Tax Act (Chapter V of the Finance Act, 1994) is barred by Limitation and that the extended period of Limitation under the Proviso to S. 73 (1) is not applicable, and even otherwise contrary to law and unsustainable and illegal 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 grant stay of operation of the Notice to a third person under Section 79(1)(c) dated 07-11-2024, issued by the First Respondent to the Third Respondent Bank

IA NO: 2 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 grant stay of all further proceedings, including recovery of tax, interest, penalty and late fee, pursuant to the impugned Order-in-Original No. 145/2023-24, dated 29-09-2023, passed by the First Respondent for the First Half Year of the F.Y. 2016-17 (i.e., from April, 2016 to September, 2016) under the Service Tax Act (Chapter V of the Finance Act, 1994)

Counsel for the Petitioner: SRI. G NARENDRA CHETTY

Counsel for the Respondent No.1:SRI DOMINIC FERNANDES (senior standing counsel for CBIC)

Counsel for the Respondent No.2: SRI GADI PRAVEEN KUMAR DY. SOLICITOR GENERAL OF INDIA

Counsel for the Respondent NO.3: ----

The Court made the following: COMMON ORDER

THE HON'BLE THE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE SMT. JUSTICE RENUKA YARA

WRIT PETITION Nos.36631 and 36644 of 2024

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

Sri G.Narendra Chetty, learned counsel for the petitioner and Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC for respondent No.1.

2. Regard being had to the similitude of the orders impugned herein, these writ petitions were analogously heard on admission.

3. The facts are taken from W.P.No.36631 of 2024. This writ petition filed under Article 226 of the Constitution of India takes exception to the Order-in-Original No.146/2023-ST, dated 29.09.2023 (wrongly typed as 29.09.2022 in the impugned order).

4. Learned counsel for the petitioner submits that although the impugned order is appealable, since the petitioner came to know about the impugned Order-in-Original only through bank and notices at no point of time were served on the petitioner, the writ petition can be directly entertained.

5. By taking this Court to Section 37C of the Central Excise Act, 1944 (hereinafter referred to as, "the 1944 Act"), learned counsel for the petitioner submits that the prescribed methods of service of decisions, orders and summons are mentioned in this provision. This provision does not provide any method of service of notices through e-mail.

6. Criticizing the stand taken by respondent No.1 in the memo dated 29.01.2025, it is submitted that the communication dated 05.10.2023 from "cgst.cntrg@gov.in" was addressed to "sekhar@jayantsadashiv.com", which may be the e-mail ID of an employee of the company, but it is not the e-mail ID of the company and consequently, the communication through e-mail is totally unknown in the teeth of Section 37C of the 1944 Act.

7. Learned counsel for the petitioner placed reliance on an order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Allahabad, in **M/s. Samsung India Electronics Private Limited v. Commissioner of Central Excise, Noida**[1] (Service Tax Appeal No.50566 of 2014 (DB), Final Order No.71611/2019, dated 18.07.2019), and urged that the order of

[1] 2019 (11) TMI 1204

the High Court of Madras in **OSA Shipping Pvt. Ltd. v. Commissioner of Central Excise, Chennai**[2], was considered in paragraph 3 of the said order.

8. Learned Senior Standing Counsel for CBIC, on the other hand, submits that the communication dated 05.10.2023 regarding the Order-in-Original was sent to "sekhar@jayantsadashiv.com". From the said e-mail ID, on behalf of the company a mail was sent on 06.10.2021. No additional affidavit has been filed stating that "sekhar@jayantsadashiv.com" is not an ID of an employee of the company and therefore, it cannot be said that the company was not aware of the Order-in-Original till it was communicated through the bank.

9. By placing reliance on Sections 142(8)(a) and 169(1)(c) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as, "the CGST Act"), learned Senior Standing Counsel for CBIC submits that a combined reading of both the provisions makes it clear that the mode of service prescribed in the CGST Act can be made applicable for recovery of arrears of tax under any previous law.

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[2] 2015 (325) ELT 486 (Mad.)

10. The parties have confined their arguments to the extent indicated above and no other point is pressed.

11. We have heard the parties at length and perused the record.

12. Section 37C of the 1944 Act reads thus:-

> **"37C. Service of decisions, orders, summons, etc.--**
> (1) Any decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be served,--
>
> (a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)], to the person for whom it is intended or his authorised agent, if any;
>
> (b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;
>
> (c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice-board of the officer or authority who or which passed such decision or order or issued such summons or notice.
>
> (2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post or courier referred to in sub-section (1) or a

copy thereof is affixed in the manner provided in sub-section (1)."

13. The CGST Act came into being in the year 2017 and Section 142 thereof deals with "miscellaneous transitional provisions". It is apposite to consider sub-section (8)(a) of Section 142 of the CGST Act, which reads thus:

> "142(8)(a). where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, **under the existing law**, any amount of tax, interest, fine or penalty becomes recoverable from the person, **the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the** amount so recovered shall not be admissible as input tax credit under this Act."
>
> (Emphasis supplied)

14. A minute reading of the aforesaid provision makes it clear that any assessment or adjudication proceedings instituted before, or after the appointed day can continue and the amount will be recoverable as an arrear of tax under the CGST Act.

15. Section 169(1)(c) of the CGST Act reads thus:-

> "169(1)(c). by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or"

16. A conjoint reading of Sections 142(8)(a) and 169(1)(c) of the CGST Act shows that the argument of the learned Senior Standing Counsel for CBIC has substantial force. The provision relating to

service of notice provided under the CGST Act can be applied in view of Section 142(8)(a) of the CGST Act in relation to any *other existing law*, which includes the 1944 Act. Thus, we are unable to persuade ourselves with the line of argument of the learned counsel for the petitioner that since Section 37C of the 1944 Act is silent about the electronic mode of service through e-mail etc., the said mode is impermissible or not acceptable.

17. So far the order of the CESTAT, Allahabad, in **M/s. Samsung India Electronics Private Limited** (supra) is concerned, paragraph 3 of the said order only gives a reference to the order of the High Court of Madras in **OSA Shipping Pvt. Ltd.** (supra). But, the said paragraph does not deal with the aspect of the validity of service of notice through e-mail mode. Apart from that, in the said case, the notices etc., were issued before the CGST Act came into being. Thus, that order is, even otherwise, of no assistance.

18. Apart from the above, the petitioner was served with a notice in Form GSTDRC 13 on 08.11.2024 issued under the CGST Act. This action also supports the contention that in view of Section

142(8)(a) of the CGST Act, adjudication proceedings instituted under the existing law shall continue under the CGST Act.

19. The petitioner has a statutory remedy of preferring an appeal. The petitioner can avail the said remedy. We find no reason to short circuit the appellate remedy and entertain the petition directly.

20. The writ petitions are accordingly **disposed of** by reserving the liberty to the petitioner to prefer an appeal. The petitioner may prefer the appeal with an application for condonation of delay by showing the date of knowledge. The appellate authority shall consider it in accordance with law. The time consumed before this Court shall not be counted for the purpose of counting the limitation. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

SD/- A. SRINIVASA REDDY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One fair copy to THE HON'BLE THE ACTING CHIEF JUSTICE SUJOY PAUL
(For His Lordship's Kind Perusal)
AND
One fair copy to THE HON'BLE SMT. JUSTICE RENUKA YARA
(For His Lordship's Kind Perusal)

To,

1. The Assistant Commissioner of Customs and Central Tax, Malkajgiri GST Division, Medchal GST Commissionerate, 8-2-77/3 and 4, 2nd Floor, Aditya Towers, Sri Sai Enclave, Old Bowenpally, Secunderabad - 500011.
2. The Secretary (Finance), Ministry of Finance, North Block, New Delhi - 110001.

3. The Branch Manager, Bank of America, Salarpuria Windsor, 5th Floor,-B-Wing, No.-3, Ulsoor Road, Bangalore-560042, Karnataka State.
4. 11 L.R. Copies.
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
6. The Secretary, Telangana Advocates Association Library, High Court for the State of Telangana at Hyderabad.
7. One CC to SRI. G NARENDRA CHETTY Advocate [OPUC]
8. One CC to SRI. DOMINIC FERNANDES (senior standing counsel for CBIC) [OPUC]
9. One CC to Sri Gadi Praveen Kumar, Deputy Solicitor General of India [OPUC]
10. Two CD Copies

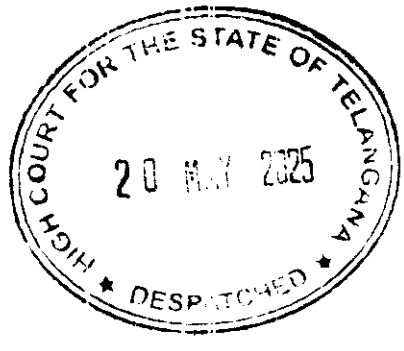
KKS
GJP

HIGH COURT

DATED:18/02/2025

COMMON ORDER

WP.Nos.36631 and 36644 of 2024



DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

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S.B
25/4/25