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

MONDAY, THE EIGHTEENTH 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: 24098 OF 2025

Between:

Sensation Infracon Pvt. Ltd., Fourth floor 8-2-616/1 Saha Building, Road No.11 near Hotel Minarva Grand, Banjara Hills, Hyderabad-500034.

...PETITIONER

AND

1. The State of Telangana, Commercial Tax Department, Represented by its Principal Secretary, BR Ambedkar Secretariat, Hyderabad
2. The Assistant Commissioner (ST) GST, Abids division, Hyderabad.
3. The Additional Director, Directorate General of GST Intelligence, Visakhapatnam Zonal Unit, D.No.28-14-17, Suryabagh, Beside Melodian Theatre, Visakhapatnam-530020
4. The Assistant Commissioner (ST), Basheerbagh-Nampally-1 Circle, Hyderabad,

...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, more particularly in the nature of a Writ of Certiorari, calling for records and quashing the order in GST Form DRC-07 bearing Order No. ZD3602250885735 dated 28.02.2025 issued by Respondent No.2 on the ground that the same is without jurisdiction, arbitrary, highhanded and violative of Articles 14 and 265 of the deems fit and proper in the facts and circumstances of the case.

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 all proceedings including recovery proceedings pursuant to the order in GST Form DRC-07 bearing Order No. ZD3602250885735 dated 28.02.2025 issued by Respondent No.2.

Counsel for the Petitioner : SRI P.S.S.KAILASH NATH

Counsel for the Respondents No.1,2&4 : SRI SWAROOP OORILLA, Spl.GP FOR STATE TAX

Counsel for the Respondent No.3:SRI DOMINIC FERNANDES, Sr.SC FOR CBIC

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.24098 of 2025

Order:

Heard Mr. Kailash Nath P.S.S., learned counsel for the petitioner; Mr. Swaroop Oorilla, learned Special Government Pleader of State Tax appearing for respondents No.1, 2 & 4 and Mr. Dominic Fernandes, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs (CBIC) appearing for respondent No.3.

2. Petitioner-company is a registered tax payer having GSTIN No:36AASCS5503K1ZW. It has been subjected to the proceedings under Section 73 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') for the financial year 2020-2021 *vide* show cause notice dated 27.11.2024, issued by Assistant Commissioner (CT), Nampally-1 Circle, Hyderabad, in Form GST DRC-01.

Thereafter, the order-in-original was passed on 28.02.2025, by the Assistant Commissioner (ST) GST, Abids Division, Hyderabad, respondent No.2, imposing liability of Rs.96,30,225.26 ps. Petitioner has assailed it in the instant writ petition on the ground that investigation, in respect of availment of Input Tax Credit (ITC) by the petitioner on invoices, without receipt of goods or services from certain suppliers, was conducted and concluded by respondent No.3- Additional Director, Director General of GST Intelligence (DGGI), under the provisions of Sections 74(5) and 74(6) of the CGST Act and the corresponding provisions of Telangana Goods and Services Tax Act, 2017 (for short 'the TGST Act'), after the petitioner paid GST of Rs.1,50,85,580/- along with interest of Rs.41,33,682/- and penalty of Rs.22,62,838/-, and submitted letters dated 29.12.2022, 08.03.2022, 01.12.2023 and 02.02.2024, to the Principal

Commissioner, Hyderabad CGST Commissionerate, requesting him to close the proceedings without issuance of any show cause notice. Letter dated 13.02.2024, issued by the Additional Director, DGGI, at para 3 reads as under:

> "Accordingly, the subject case proceedings against M/s. Sensation Infracon Pvt. Ltd. (36AASC85503K1ZQW) were concluded under the provisions of Section 74(5)/74(6) of CGST Act, 2017 and corresponding provisions of Telangana GST Act, 2017. In this connection, it is also informed that conclusion of case proceedings in the subject case is limited to the ITC received from the above mentioned suppliers and that too the amount mentioned only. With regard to ITC availed on the basis of other invoices or suppliers, the jurisdictional officers may take action as deemed fit in case of any irregularities. The above conclusion is without prejudice to any action the taxpayer

is liable under the CGST Act/Telangana GST Act or any other Act in force."

3. Learned counsel for the petitioner submits that though the investigation relating to the said invoices for the period November, 2021, to January, 2024, was closed, the State Tax authority, respondent No.2, issued show cause notice dated 04.08.2022, for the subject period April, 2020, to March, 2021, and proceeded to impose the above tax liability along with penalty without application of mind. Therefore, the petitioner has approached this Court.

4. Learned counsel for the petitioner has taken a plea that the show cause notice was not served on the petitioner by post or email but merely uploaded on the Additional Notices and Orders tab of the GSTIN portal. Therefore, he was not aware of the show cause notice dated 04.08.2022. The impugned proceedings have therefore, been assailed.

5. Learned Special Government Pleader for State Tax has straight away drawn the attention of this Court to Section 169(1)(d) of the CGST Act and submitted that any decision, order, summons, notice or other communication under the CGST Act or the rules made thereunder would be treated to be served by any of the methods stated in Clauses (a) to (f). Clause (d) specifically provides for making it available in common portal. Sub-section (2) thereof provides that every such decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1). Sub-section (3) also provides that such communication is deemed to have been received by the addressee on expiry of the period normally taken by such post in transit unless the contrary is proved.

Therefore, the uploading of the show cause notice on the common portal amounts to service on the petitioner/assessee.

6. It is submitted that the petitioner has not participated in the proceedings pursuant to the show cause notice dated 04.08.2022, and instead assailed the order-in-original dated 28.02.2025, on the grounds of violation of principles of natural justice and non-application of mind in failing to deal with the closure of investigation by Additional Director, DGGI, as per letter dated 13.02.2024. He submits that the petitioner ought to have availed the appellate remedy, instead of approaching this Court, whereby the petitioner's claim of having partly paid GST along with interest and penalty against invoices for availment of ITC from the suppliers, would have been duly scrutinized on the basis of the records. Therefore,

learned counsel has opposed the prayer for interference in the impugned order-in-original dated 28.02.2025.

7. We have considered the submissions of learned counsel for the parties.

8. We have also taken note of the relevant documents and pleadings placed on record hereinabove.

9. On a mere perusal of the letter dated 13.02.2024, addressed by the Additional Director, DGGI, to the Principal Commissioner, Hyderabad CGST Commissionerate, in respect of the investigation conducted against the petitioner for availment of ITC based on invoices without receipt of goods or services from the main suppliers, it would appear that part payment of the tax, penalty and interest under DRT-03 has been made from 23.11.2021 onwards till 06.01.2024.

It, however, does not appear that the invoices against which the investigation was conducted by the Additional Director, DGGI, also fall within the tax period April, 2020, to March, 2021, which is the subject matter of the show cause notice dated 04.08.2022, or for subsequent periods. This was a matter to be scrutinized on any such plea raised by the petitioner before the assessing officer. The petitioner, however, has not participated in the proceedings despite uploading of the show cause notice on the GSTIN portal. Order-in-original was based on the assessment imposing tax and penalty to the tune of Rs.1,05,93,246/-. In such circumstances, this Court, in exercise of writ jurisdiction, is not required to scrutinize whether the proceedings under the show cause notice dated 04.08.2022, were overlapping the proceedings under the investigation conducted by Additional Director, DGGI, as indicated above. It was the duty of the

petitioner to appear and file his reply before the assessing authority, respondent No.2, questioning the same. Even otherwise, letter dated 13.02.2024, of the Additional Director, DGGI, clearly mentioned at para 3 quoted above, that conclusion of the case proceedings in the said case is limited to the ITC received from the above mentioned suppliers and that too, for the above mentioned amount only. With regard to the ITC availed on the basis of other invoices from other suppliers, the jurisdictional officers may take action as deemed fit in case of any irregularities. The conclusion recorded by the Additional Director, DGGI, was without prejudice to any action against the petitioner for his liability under the CGST Act or TGST Act or any other Act in force.

10. TGST Act provides for remedy of appeal under Section 107. The petitioner, instead of availing the remedy of appeal, has straight away rushed to this Court.

11. Learned counsel for the petitioner has placed before this Court a copy of the recent decision rendered by the Apex Court in **M/s Armour Security (India) Ltd. V. Commissioner, CGST, Delhi, East Commissionerate & anr.** [Special Leave Petition (C) No.6092 of 2025 judgment dated 14.08.2025]. He has specifically drawn the attention of this Court to the conclusions at paras 96 and 97 thereof.

12. We are benefited by the observations made by the Apex Court that in respect of instances where parallel proceedings are being initiated by Central and the State Tax administrations, the action must be initiated by the tax administration to which the taxpayer is assigned under

Section 6(2) of the GST Act. The conclusions at Clause (vi) of para 96 quoted hereunder are germane to issue at hand:

> "The expression "initiation of any proceedings" occurring in Section 6(2)(b) refers to the formal commencement of adjudicatory proceedings by way of issuance of a show cause notice, and does not encompass the issuance of summons, or the conduct of any search, or seizure *etc.*"

13. The guidelines prescribed under Para 97, specifically Clause (b), provide that where an assessee becomes aware that the matter being inquired into or investigated is already the subject of an inquiry or investigation by any authority, the assessee shall forthwith inform, in writing, the authority that has initiated subsequent inquiry or investigation.

14. Thus, in the present case, the investigation undertaken by the Additional Director, DGGI, did not amount to commencement of proceedings. Moreover, the petitioner/assessee was required to inform the same, in writing, to the authority that has initiated the subsequent inquiry or investigation.

15. In the instant case, a show cause notice for initiation of proceedings under Section 73 of the CGST Act were issued by the State Tax authority, where the petitioner ought to have appeared and explained its position, which it has failed to do.

16. In the aforesaid facts and circumstances of the case, we do not find any reason to interfere with the impugned order-in-original dated 28.02.2025 passed by respondent No.2. However, the petitioner may be at liberty to avail the appellate remedy as is permissible under law.

17. The instant Writ Petition is, accordingly, dismissed. No costs.

18. Let it be made clear that we have not made any observations on the merits of the case of the parties.

As a sequel, miscellaneous petitions, pending if any, stand closed.

SD/- AHMED ABDULLAH KHAN
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to SRI P.S.S.KAILASH NATH P S S Advocate [OPUC]
2. One CC to SRI SWAROOP OORILLA, SPL.G.P for State Tax. [OPUC]
3. One CC to SRI DOMINIC FERNANDES, Senior Standing Counsel for CBIC. [OPUC]
4. Two CD Copies.

BSK
LS

HIGH COURT

DATED:18/08/2025



ORDER

WP.No.24098 of 2025

DISMISSING THE WRIT PETITION WITHOUT COSTS

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kpr
9/9/25