IN THE 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: 20064 OF 2025

Between:

M/s. Maan INC., First floor, 106,3-2-177/189, Vajra Plaza, Kalasiguda, Secunderabad - 500003. Telangana,

Rep.by its Partner

Mr. Solanki Harish Kumar Natwarsinh aged 71 years

...PETITIONER

AND

1. The Assistant Commissioner of Central Tax, Bugumpet GST Division, Indira park , GST Commissionerate, 382 Queen's Plazza, S.P. Road, Secunderabad - 500016.
2. The Union of India, Rep. by its Secretary, Ministry of Finance, North Block, New Delhi - 110 001.

...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 of Mandamus or any other appropriate Writ or Order or Direction declaring the action of the 1st Respondent in passing the Order-in-Original. dated 05.02.2025 for the tax period 2017-18 to 2021-22 Under Section 74 of CGST/SGST Acts, 2017 instead of section 73 of CGST/SGST Acts, 2017 without satisfying any ingredients for the extended period of limitation to the said Section 74 as arbitrary, contrary to the provisions of the Acts, barred by the limitation, without DIN not even issuing prior Notice as per Rule 142 (1A) of CGST/SGST Rules, 2017, without jurisdiction and in violation of Principles of Natural Justice and Rule of law and consequently set aside the Order-in-Original

dated 05-02-2025 passed by the 1st Respondent under Section 74 instead of passing under Section 73 of the CGST/SGST Acts 2017, as null and void.

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 Operation of the Order-in-Original, dated 05.02.2025 passed by the 1St Respondent for the tax periods 2017-18 to 2021-22 under the CGST/SGST Act 2017, pending disposal of the above Writ Petition, as otherwise, the Petitioner will be put to severe loss and hardship.

Counsel for the Petitioner: SRI SHAIK JEELANI BASHA

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

Counsel for the Respondent No.2: SRI B. MUKHERJEE, SC

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.20064 of 2025

ORDER:

Mr. Shaik Jeelani Basha, learned counsel for the petitioner.

Mr. Dominic Fernandes, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs (CBIC) appears for respondent No.1.

Mr. B.Mukherjee, learned counsel for respondent No.2.

2. Heard learned counsel for the parties.

3. The impugned order-in-original is dated 05.02.2025 passed on the basis of a show cause notice dated 28.03.2024 whereby the respondent No.1 has dropped certain demands and confirmed certain demands of CGST and SGST in a proceeding under Section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act'). It has also imposed interest liability and penalty upon the petitioner.

4. Learned counsel for the petitioner *inter alia* has taken a number of grounds that the order-in-original dated 05.02.2025 is not valid in the eye of law as it does not contain any DIN number. It is further submitted that a composite order-in-original has been passed for a number of years i.e., from 2017-18 till 2021-22 which is not proper in the eye of law. It is further submitted that the intimation under Rule 142(1A) of the Central Goods and Services Tax (CGST) Rules, 2017 (hereinafter referred to as 'the CGST Rules') has not been issued. Therefore, the show cause notice in GST DRC01 is not valid in the eye of law. Therefore, the impugned order may be interfered.

5. Learned Senior Standing Counsel for CBIC has straight away pointed out from paragraph No.11 of the order-in-original dated 05.02.2025 that DRC01A was issued on 06.09.2023 in favour of the petitioner before issuance of the proceedings under Section 74(1) of the CGST Act. Therefore, that statement is not correct. The writ petition does not annex the intimation in Form DRC01A. The summary of the order in DRC07 is also not annexed to the writ petition.

6. Learned Senior Standing Counsel for CBIC has submitted that as per Section 74(10) read with Sub-Section (2) of the CGST Act, the Assessing Officer is under a duty to pass order within a period of five years from the due date of furnishing of annual return for the financial year to which tax is not paid or short paid or ITC wrongly availed or utilised. Sub-Section (2) of Section 74 of the CGST Act mandates issuance of a notice at least six months prior to the time limit specified in Sub-Section (10) of Section 74 for issuance of the order. It is submitted by reference to the Notification No.6 of 2020 dated 03.02.2020 that the last date for furnishing annual returns for the financial year 2017-18 was extended to 07.02.2020. Similarly by Notification No.80 of 2020 dated 28.10.2020, the last date for furnishing annual returns for financial year 2018-19 was extended up to 31.12.2020. Therefore, even for the financial year 2017-18, the order could be passed within five years from the date of filing of the annual returns which is February, 2025. In the instant case, the show cause notice has been issued for all the financial years on 28.03.2024 which is well within the time line prescribed under Section 74(10) of the CGST Act and read with the

Notification Nos.6 of 2020 and 80 of 2020 even for financial years 2017-18 and 2018-19. It is submitted that the petitioner has instead of availing the remedy of appeal under Section 107 of the CGST Act, approached this Court after delay. Therefore, the writ petition may not be entertained.

7. Upon consideration of the rival submissions of the parties and after taking note of the relevant materials placed on record, we are of the considered view that the petitioner has not availed the remedy of appeal before approaching this Court. Some of the contentions of the petitioner that the DRC01A was not issued is also incorrect. Moreover, the summary of the show cause notice alleged to be without DIN number has also not been annexed. In such circumstances, this Court is not inclined to invoke its writ jurisdiction. In such a case, petitioner may have the liberty to prefer an appeal as is permissible in law.

8. The writ petition was preferred on 02.05.2025.

9. Learned counsel for the petitioner submits that the writ petition was filed well within time for preferring the appeal under Section 107 of the CGST Act on 02.05.2025. Therefore,

the appellate Authority may be directed to condone the delay taking into account the time spent in pursuing the writ petition before this Court.

10. Accordingly, it is observed that since the writ petition was filed within the time prescribed for filing an appeal under Section 107 read with Sub-Section (4) of the CGST Act, the appellate authority would consider the question of delay taking into account the pendency of the matter before this Court.

11. Writ petition is, accordingly, dismissed. However, there shall be no order as to costs. Let it be made clear that we have not gone into the merits of the case of the parties.

Miscellaneous applications pending, if any, shall stand closed.

SD/-P. PONNA KRISHNA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to Sri Shaik Jeelani Basha, Advocate [OPUC]
2. One CC to Sri Dominic Fernandes (senior standing counsel for CBIC) [OPUC]
3. One CC to Sri B. Mukherjee, SC[OPUC]
4. Two CD Copies

T J
LS

HIGH COURT

DATED:18/08/2025



ORDER

WP.No.20064 of 2025

DISMISSING THE WRIT PETITION

WITHOUT COSTS

(6)
tpr
9/9/25