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

WRIT PETITION NO: 21177 OF 2025

Between:

M/s.Tirumala Constructions, B/33, A.P.H.B. Colony, Adilabad. Adilabad District. Rep. by its Managing Partner Mr.Gutta Suman Kumar

...PETITIONER

AND

1. The Additional Commissioner of Central Tax, D.No.1-98/B/20-21, Sanvi Yamuna Pride, Krithika Layout, Hi-Tech City, Madhapur, Hyderabad - 500 081.
2. The Joint Commissioner of Central Tax, Medchal Commissionerate, 11-4-649/B, Lakdi-ka-pul, Hyderabad.
3. The Assistant Commissioner of Central Tax, Nizamabad Division, Medchal Commissionerate, KNAR Estate, Nizamabad - 500 303.
4. The Superintendent, Adilabad GST Range, 6-10-86/8/1, 2nd Floor, Bhuktapur, Adilabad - 504 001.
5. The State of Telangana, Rep. by its Principal Secretary, Revenue (CT) Department, Telangana Secretariat, Hyderabad.
6. The Branch Manager, Bank of Maharashtra, 3-2-10, A11, Gunj Road, Adilabad.

...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.

(1) the Section 16(2)(c) read with Section 41(2) of the IGST/CGST/SGST Act 2017 is ultra vires to Article 14, 19(1)(g), 21, 265 and 300A of the Constitution of India,

(2) the action of the 2nd Respondent in passing the Order-in-Original, dated 22.12.2023 for the tax period 2017-18 to 2019-20, levying Tax, Interest and Penalty and passing a Composite Order covering three financial years, instead of passing Orders for each financial year separately, that too under

Section 73/74 of the IGST/CGST/SGST Act 2017, instead of passing the Proceedings under Section 73 of the IGST/CGST/SGST Act 2017, without establishing ary fraud or misstatement, as arbitrary, contrary to law, without jurisdiction and against the Principles of Natural Justice and Rule of Law, and also the same is contrary to Article 14 19(i)(g) and 21 of the Constitution of India,

(3) the action of the 1st Respondent in issuing Show Cause Notice No.07/2023/24, dated 22.09.2023, without any signature, is nonest in the eye of law and basing on the nonest Show Cause Notice, passing Order in Original No.80/2023-(GST), dated 22.12.2023 is not valid in the eye of law,

(4) the action of the 3rd and 4th Respondents in issuing Notices and passing the Summary of Orders in Form GST DRC-07, dated 30.01.2024 and 13.08.2024, for the tax period 2017-18 to 2019-20, without any signature either physicaly or digitally in the Notices and Orders, are not valid in the eye of law,

(5) the action of the 3rd and 4th Respondents in issuing Notices and passing the Summary of Orders, without generating DIN in the Orders as per Circular No.128/47/2019-GST, dated 23.12.2019 and as per W.P.No.320 of 2022, dated 18.07.2022 of the Hon'ble Supreme Court, are not valid, and consequently set aside the Order-in-Original NO.80/2023-(GST), dated 22.12.2023 for the tax period 2017-18 to 2019-20 passed by the 2nd Respondent and the Summary of the Order in Form GST DRC-07 for 2017-18, dated 30.01.2024, the Summary of the Order in Form GST DRC- 07 for 2018-19, dated 30.01.2024 and the Summary of the Order in Form GST DRC-07 for 2019-20, dated 30.01.2024 passed by the 3rd Respondent and also the Order-in-Original No.07/2024-25(GST), dated 09.08.2024 and the Summary of the Order in Form GST DRC-07, dated 13.08.2024 passed by the 4th Respondent for the tax period 2019-20 under the IGST/CGST/SGST Act 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 direct the 3rd Respondent to revoke the Garnishee Notice in Form GST DRC-13, dated

19.03.2025 issued by the 3rd Respondent to the 6th Respondent, pending disposal of the above Writ Petition, as otherwise. the Petitioner will be put to severe loss and hardship.

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 Suspend the Operation of the the Order-in-Original No.80/2023-(GST), dated 22.12.2023 for the tax period 2017-18 to 2019-20 passed by the 2"d Respondent. the Summary of the Order in Form GST DRC-07 for 2017-18, dated 30.01.2024, the Summary of the Order in Form GST DRC-07 for 2018¬19, dated 30.01.2024 and the Summary of the Order in Form GST DRC-07 for 2019-20. dated 30.01.2024 passed by the 31(1 Respondent and also the Order-in-Original. dated 09.08.2024 and the Summary of the Order in Form GST DRC-07, dated 134)8.2024 passed by the 4th Respondent for the tax period 2019-20 under the IGST/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 MOHAMMED RAFI .. TMP DULY ASSISTED BY SRI V.RAJESHWAR RAO

Counsel for the Respondent Nos.1 TO 4: SRI DOMINIC FERNANDES, senior standing counsel for CBIC

Counsel for the Respondent No.5: GP FOR COMMERCIAL TAX

Counsel for the Respondent No.6: --

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.21177 of 2025

Order:

Mr. Mohammed Rafi.TMP, learned counsel for the petitioner appears in virtual mode and he is duly assisted by Mr. V.Rajeshwar Rao, learned counsel appearing in physical mode.

2. Mr. Dominic Fernandes, learned Senior Standing Counsel for Central Board of Income Taxes and Customs (CBIC) appears for respondents No.1 to 4.

3. The instant Writ Petition has been preferred with the following prayers:

> "(i) Section 16(2)(c) read with Section 41(2) of the IGST/CGST/SGST Act 2017, is *ultra vires* to Articles 14, 19(1)(g), 21, 265 and 300A of the Constitution of India;
>
> (ii) The action of the 2nd respondent in passing the Order-in-Original dated 22.12.2023 for the tax period 2017-18 to 2019-20, levying Tax, Interest and Penalty and passing a Composite Order covering three

financial years, instead of passing Orders for each financial year separately, that too under Section 73/74 of the IGST/CGST/SGST Act, 2017, instead of passing the Proceedings under Section 73 of the IGST/CGST/SGST Act, 2017, without establishing any fraud or misstatement as arbitrary, contrary to law, without jurisdiction and against the Principles of Natural Justice and Rule of Law, and also the same is contrary to Articles 14, 19(1)(g) and 21 of the Constitution of India;

(iii) The action of the 1st Respondent in issuing Show Cause Notice No 07/2023/24 dated 22.09.2023, without any signature, is nonest in the eye of law and basing on the nonest Show Cause Notice, passing Order-in-Original No.80/2023-(GST) dated 22.12.2023, is not valid in the eye of law;

(iv) The action of the 3rd and 4th Respondents in issuing Notices and passing the Summary of Orders in Form GST DRC-07 dated 30.01.2024 and 13.08.2024, for the tax period 2017-18 to 2019-20, without any signature either physically or digitally in the Notices and Orders, are not valid in the eye of law; and

(v) The action of the 3rd and 4th Respondents in issuing Notices and passing the Summary of Orders without generating DIN in the Orders as per Circular

> No 128/47/2019-GST, dated 23.12.2019, and as per W P.No.320 of 2022 dated 18.07.2022, of the Hon'ble Supreme Court are not valid."

4. Learned Senior Standing Counsel for CBIC has brought to the notice of this Court, Common Order dated 02.01.2025, passed in W.P.No.1154 of 2024 and batch, of which W.P.No.10591 of 2024 forms part, pertains to the petitioner herein. It is stated that in the said writ petition, petitioner had challenged the order-in-original dated 22.12.2023 and the summary of the order in Form GST DRC-07 dated 30.01.2024, covering the same tax period 2017-18 to 2019-20. The said Writ Petition along with the similar batch of Writ Petitions, was disposed of by a Coordinate Bench, holding as under:

> "117. The COVID-19 Pandemic created extraordinary difficulties which could not have been anticipated, measured and solved with mathematical precision. COVID-19 was not a creation of Government. Thus, hair-splitting in many aspects must be eschewed. For example, the argument of Sri Karthik Ramana Puttamreddy

that in the initial notification extending limitation, 'spread of COVID' was shown as a reason which cannot be a justification for issuance of impugned notifications issued after COVID-19 was over. While dealing with such an extraordinary crisis, Government's action must be viewed in a broad perspective.

118. In view of our finding that period between 15.03.2020 to 28.02.2022 stood excluded for limitation as per Supreme Court's order, remaining points raised by the petitioners relating to legality of impugned notifications need not be dealt with.

119. In this batch of matters, admittedly, the petitioners have a statutory efficacious alternative remedy of appeal. These matters were entertained despite availability of above remedy because the petitioners assailed the impugned notifications Nos.13 of 2022, 9 and 56 of 2023. In view of order of Supreme Court dated 10.01.2022, since we find no reason and justification to interfere with those notifications. The petitioners may avail the statutory remedy of appeal.

120. The Allahabad High Court in **Graziano Transmissions v. Goods and Services Tax** [(2024)

19 Centax 82 (Allahabad)], in this regard held as under:

> "138. Seen in that light the decisions cited by learned counsel for the petitioners are found to be distinguished. The writ petitions challenging the issuance of the impugned notifications must fail. Hearing of all cases where adjudication proceedings are pending may recommence and be concluded, after excluding the duration of stay of the extended limitation to frame the adjudication order. Wherever adjudication orders have been passed and recovery stayed by this Court, the petitioners shall have 45 days from today to file appropriate appeals. 139. The writ petitions are thus dismissed. No order as to costs." (Emphasis Supplied)

121. These Writ Petitions are accordingly disposed of by reserving liberty to the petitioners to avail the remedy of statutory appeal. If the appeal is preferred by the petitioners within 45 days before the appellate authority, the said authority shall consider and decide the appeal on merits and it shall not be thrown overboard on the ground of limitation. It is made clear that this Court has not expressed any opinion on merits of the cases. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand closed."

5. Learned Senior Standing Counsel for CBIC pointed out that in the present writ petition, the same order-in-original and the summary of the order, both dated 22.12.2023 and 30.01.2024, for the same tax period are under challenge except that petitioner has now sought to challenge the *vires* of Section 16(2)(c) r/w Section 41(2) of the IGST/CGST/SGST Act, 2017 (for short 'the Act'). He submits that the present writ petition is hit by the doctrine of constructive *res judicata.* Petitioner could have raised challenge to the *vires* of Section 16(2)(c) and Section 41(2) of the Act in the earlier writ petition, but it has failed to do so. It is submitted that the cause of action cannot be split up and made subject matter of repeated proceedings as it is vexatious and against the interests of public. Therefore, the Writ Petition may be dismissed.

6. Both the learned counsel appearing for the petitioner virtually and physically are seeking further time. Reference is made to the order dated 22.07.2025, which reads as under:

"Sri Shaik Jeelani Basha, learned counsel representing Sri Mohammed Rafi, learned counsel for the petitioner.

Sri Dominic Fernandes, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs appears for respondent Nos.1 to 4.

An objection has been taken by the learned counsel for respondent Nos.1 to 4 to the maintainability of the writ petition, as the impugned orders passed in GST proceedings under Sections 73 and 74 of the Central Goods and Services Tax, 2017 were challenged in W.P.No.10591 of 2024 and this Court refused to interfere in the matter. This time, the petitioner has not only challenged the adjudication orders of the same tax period, but also challenged the vires of Section 16(2)(c) of the above said Act. This is hit by constructive *res judicata.*

Learned counsel for the petitioner prays for a week's time to answer.

List after one week."

7. Thereafter, the matter was once again adjourned on 19.08.2025, on request of learned counsel for the petitioner. Therefore, the request for adjournment is refused.

8. On a bare perusal of the prayer made in the instant writ petition, it is apparent that the petitioner had sought to assail the very same order-in-original and the summary of the order, both dated 22.12.2023 and 30.01.2024, for the same tax period, which were the subject matter of W.P.No.10591 of 2024, filed by the same petitioner. The said writ petition was disposed of along with a similar batch of writ petitions on 02.01.2025, with liberty to the petitioner to prefer an appeal. Instead of preferring an appeal, the petitioner has once again approached this Court against the same order-in-original and the summary of the order, for the same tax period. Apart from challenging the impugned order-in-original and summary of the order, the petitioner has also assailed the *vires* of Section 16(2)(c) r/w 41(2) of the Act. Such a recourse is hit by the doctrine of

constructive *res judicata*. Litigant is not at liberty to split the cause of action and rake it up again and again, thereby, not only engaging the precious time of the Court, but also putting the respondents to prejudice.

9. Therefore, for the above reasons, the Writ Petition is not fit to be entertained.

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

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

SD/- M. NAGAMANI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. One CC to SRI MOHAMMED RAFI .. TMP, Advocate [OPUC]
2. One CC to SRI DOMINIC FERNANDES, senior standing counsel for CBIC [OPUC]
3. Two CCs to GP FOR COMMERCIAL TAX, High Court for the State of Telangana, at Hyderabad. [OUT]
4. Two CD Copies

PSK.
GJP

HIGH COURT

DATED:26/08/2025

ORDER

WP.No.21177 of 2025



DISMISSING THE WRIT PETITION
WITHOUT COSTS

(7)
15/10/25
b.k