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

TUESDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HON'BLE THE CHIEF JUSTICE APARESH KUMAR SINGH
AND
THE HON'BLE SRI JUSTICE G.M. MOHIUDDIN

WRIT PETITION NO: 28654 OF 2025

Between:

M/s. Shankarampet Projects Private Ltd., (formerly known as KNR Shankarampet Projects Private Ltd.) represented by its Authorized representative Abhijit Sathe Door No. 2-5/1/A, Near Venkateswara theatre, Pitlam, Kamareddy District, Telangana-503 310

...PETITIONER

AND

1. The Appellate Joint Commissioner of State Tax, Hyderabad Rural Division, Hyderabad, 5th Floor, C.T Complex, Nampally, Hyderabad-500 001.
2. The Deputy Commissioner (ST)-III, Enforcement Wing-1, Commercial Taxes Department, Hyderabad, Telangana.
3. State of Telangana, Represented by the Principal Secretary, Revenue Department (State Tax), Secretariat, Hyderabad-500 004.
4. Union of India, Represented by its Secretary, Ministry of Finance, Department of Revenue, 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 an appropriate writ, order, or direction, more particularly one in the nature of Writ of Mandamus or any other appropriate writ declaring (1) Order-in-Appeal dated 20/06/2025 bearing Order No. ZD360625021149F and bearing ARN AD3609240072933 along with FORM GST APL-04 dated 20/06/2025 passed by the Respondent No. 1 for the period FY 2019-20 to being arbitrary, illegal, in violation of principles of natural justice, suffering from non-application of mind, and in violation of Section 107(12) of the CGST Act. (ii) FORM GST APL-04

dated 20/06/2025 passed by the Respondent No. 1 as null and void, illegal, and without jurisdiction, as it is issued without authority of law, and non-est in law on account of the lack of signature. (iii) Order-in-Original along with the Summary of the order in FORM GST DRC-07 bearing Reference No. ZD3606241236858 dated 29/06/2024 issued by the Respondent No. 2 is also null and void, illegal, and without jurisdiction as it is issued without authority of law, and non-est in law on account of the lack of signature. (iv) The Show Cause Notice along with the Summary of Show Cause Notice in FORM GST DRC-01 dated 23/02/2024 bearing reference No. ZD360224038556D issued by Respondent No. 2 is also null and void, illegal, and without jurisdiction, as it is issued without authority of law and non-est in law on account of the lack of signature.

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 stay the Order-in-Appeal dated 20.06.2025 bearing Order No.ZD360625021149F and bearing ARN AD3609240072933 along with FORM GST APL-04 dated 20.06.2025 passed by the Respondent No.1 under Section 74 of the CGST Act, 2017 for the period April 2019 to March 2020 and any coercive steps against the Petitioner by the Respondents.

Counsel for the Petitioner: SRI KARAN TALWAR

Counsel for the Respondents No.1 to 3: SRI SWAROOP OORILLA,
SPECIAL GOVERNMENT PLEADER FOR STATE TAX

Counsel for the Respondent No.4: SRI PULIMAMIDI SHASHIDHAR REDDY,
S.C. FOR CENTRAL GOVERNMENT

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.28654 of 2025

ORDER:

Learned counsel Sri Karan Talwar appears for the petitioner.

Sri Swaroop Oorilla, learned Special Government Pleader for State Tax, appears for respondents No.1 to 3.

Learned counsel Sri Pulimamidi Shashidhar Reddy appears for respondent No.4.

2. Impugned herein is the order-in-appeal dated 20.06.2025 passed by the Appellate Joint Commissioner (ST), Hyderabad Rural Division, Hyderabad (Annexure P1). The order-in-original (Annexure P3) concerning the financial year 2019-2020 passed under Section 73 of the Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as, "the Act"), imposed tax, interest and penalty under Section 73(9) of the Act and confirmed the demand.

3. Along with its appeal, the petitioner, a Concessionaire with the National Highways Authority of India (NHAI), had submitted service concession agreement, balance sheet for the year 2019-2020, GSTR-9 and GSTR-9C for the same year, GSTR-3B and GSTR-1 and the agreement entered with the KNR Constructions to execute the work. The petitioner had taken a plea that under the aforesaid arrangement, it was required to construct the asset (road) and at the end of the concession period, the road will be transferred to NHAI. In lieu of the services provided, the petitioner would be entitled to receive 40% of the bid project cost as 'Construction Support' during the construction phase and remaining 60% is due and payable in the form of bi-annual annuity installments after the Commercial Operation Date (COD) i.e., after construction of the road, over a period of 15 years. The petitioner follows the Indian Accounting Standards (Ind AS) for accounting and reporting purposes. Its financial statements were prepared in accordance with the Ind AS as per the Companies (Indian Accounting Standards) Rules,

2015, notified under Section 133 of the Companies Act, 2013, and other relevant provisions of the said Act. According to the petitioner, the GST obligations become due and payable for the year 2019-2020. However, the turnover reported in the monthly GST filings (GSTR-1 and GSTR-3B) was based on the amounts that were due and receivable by the petitioner during the construction period in terms of the concession agreement. While submitting GSTR-9 and GSTR-9C forms for financial year 2019-2020, the petitioner inadvertently classified the variation (difference in turnover according to Financial Statements versus GST returns) as exempt turnover, rather than correctly reporting it as an adjustment needed to reconcile the turnover figures between the Financial Statements and the GST returns. This led to the issuance of show cause notice in Form DRC-01 from the Deputy Commissioner – Enforcement Wing, dated 23.02.2024. The adjudicating authority proposed to disallow the turnover reported as exempt in the GST returns filed by the petitioner for the financial year 2019-2020 and proposed to levy tax on the

exempted turnover reported by the petitioner. The petitioner in its response explained as to why the differential amount of turnover (inadvertently reported as exempted turnover) was not subject to taxation during the financial year 2019-2020. The petitioner also got an opportunity to attend personal hearings. The petitioner, *inter alia*, contended that the adjudicating authority has stated that the petitioner is in receipt of annuity amounts against the annuity invoices raised post introduction of GST. According to the petitioner, for the financial year 2019-2020, specifically relevant to the show cause notice, it was engaged in the construction phase of the contract and did not receive any annuity payments from NHAI. The construction support received by the petitioner during this phase should not be classified as an annuity under the Hybrid Annuity Model (HAM). The annuity refers to the predetermined sum that is paid after the COD i.e., during the operation and maintenance period. According to the petitioner, the adjudicating authority erroneously arrived at the opinion that the exemption claimed by the company

on the annuity income is irregular as the services provided by it do not fall under the Service Accounting Code (SAC) 9967 as the company is not providing any service by way of access to a road or bridge on payment of annuity and provided only construction and maintenance services which clearly falls under SAC 9954. Hence, the exemption claimed under clause 23A of the Notification No.12/2017-CT(R) by classifying Build-Operate-Transfer (BOT) (Annuity) Model under Chapter Heading No.9967 and treating annuity at par with Toll collection appears to be irregular in terms of the provisions of the Act and the Notifications issued thereunder. In its memo of appeal, the petitioner contended that the understanding of the adjudicating authority was incorrect, unfounded and without merit, since the petitioner had entered into a concession agreement under the HAM and not BOT annuity model. Moreover, the petitioner has not, at any point, either in its replies or otherwise, claimed GST exemption on annuity payments by categorizing the annuities under SAC 9967. The petitioner had neither

made such a submission nor had it classified annuity payments under SAC 9967. The pre-commercial operation date was achieved in October, 2021. Subsequent to the COD, from the financial year 2021-2022 onwards, the petitioner has been receiving annuity payments from NHAI and has appropriately paid tax on these payments, classifying them under SAC 9954, which are verifiable through the copies of GSTR-1 and GSTR-3B post COD for the financial years 2021-2022 and 2022-2023. It, therefore, assailed the reasonings drawn in the order-in-original by the adjudicating authority that the documents submitted by the tax payer shows that the annuity paid by the NHAI covers the entire cost of construction services provided by including the operation, routine and periodic maintenance of the constructed roads during the operation and maintenance phase under the same concession agreement dated 31.03.2006. It was also pleaded that the adjudicating authority had accepted that the services provided by the petitioner constitute a continuous supply of services, but had incorrectly applied Section 31(2)

instead of Section 31(5) of the Act for imposing the demand without providing any valid reasons for this deviation. Therefore, the order-in-original was assailed as suffering from non-application of mind passed in a premeditated manner. The petitioner also relied upon the Central Board of Indirect Taxes and Customs (CBIC) Circular No.221/15/2024, dated 26.06.2024, which provides clarification on the determination of the time of supply for GST purposes in relation to construction and maintenance services of National Highway Projects under the HAM by NHAI. However, the adjudicating authority did not adhere to the guidelines set forth in the circular and erroneously upheld the demand. The circular, according to the petitioner, clarifies that under HAM categorized as a 'continuous supply of services' as defined in Section 2(33) of the Act, the time of supply is determined by either the date of issuance of invoice or the receipt of payment, whichever is earlier, provided that the invoice is issued within the prescribed period or upon the completion of an event as specified in the contract. If the invoice is not

issued as required, the time of supply then defaults to the date on which the service was provided or the payment was received, whichever is earlier. Therefore, according to the petitioner, the services in question fall under the scope of continuous supply of service and that the invoicing and time of supply should be regulated by the stipulations in Sections 31(5) and 13(2) of the Act. However, the adjudicating authority held that the time of supply should be determined by the general rule set out in Section 31(2) of the Act in disregard of the aforesaid circular. It is submitted that despite substantive grounds taken in the memo of appeal, the appellate authority has, without any consideration, held that the appellant is not in a position to provide any evidence of payment of GST on the turnover of Rs.411,77,54,681/- and on the difference turnover between GSTR-1 and GSTR-3B payable under Section 9(1) of the Act as per the provisions of the CBIC circular dated 26.06.2024 before the adjudicating authority or before the appellate authority. Therefore, the appeal is not proper and

correct as per law. The findings of the adjudicating authority do not require any interference.

4. Learned counsel for the petitioner submits that the impugned appellate order at paragraph 10 thereof summarily rejects the memo of appeal without even referring to or discussing any of the grounds raised by the petitioner. Therefore, the impugned order may be set aside.

5. Learned Government Pleader appearing for State Tax is not in a position to dispute that the grounds taken by the petitioner in its memo of appeal have not been dealt with by the appellate authority. He is also not in a position to dispute that the petitioner had taken categorical grounds that the payments under the HAM were receivable upon annuity being released post COD, which have been treated by the adjudicating authority as received during the financial year 2019-2020 to impose the penalty and interest thereupon. The adjudicating authority had also failed to consider that the nature of services provided by

the petitioner were not under the BOT model, but rather under the HAM.

6. On consideration of the rival submissions of the parties and the discussion made hereinabove, we are of the view that the appellate authority has failed to deal and discuss any of the grounds supported by evidence submitted by the petitioner while upholding imposing penalty and interest upon the petitioner for the relevant tax period 2019-2020.

7. Reasons are the soul of the order. A mere perusal of paragraph 10 of the impugned order shows total non-consideration of the grounds urged. Reference is made to the decision of the Apex Court in **Kranti Associates (P) Ltd. v. Masood Ahmed Khan**[1].

8. Having regard to the aforesaid discussion made and the reasons recorded, the order-in-appeal dated 20.06.2025 is set aside. The matter is remitted to the appellate authority to pass a fresh order in accordance

[1] (2010) 9 SCC 496

with law. The petitioner should appear before the appellate authority on 06.10.2025.

9. The writ petition is accordingly disposed of. However, there shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

SD/-G. JYOTHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Appellate Joint Commissioner of State Tax, Hyderabad Rural Division, Hyderabad, 5th Floor, C.T Complex, Nampally, Hyderabad-500 001.
2. The Deputy Commissioner (ST)-III, Enforcement Wing-1, Commercial Taxes Department, Hyderabad, Telangana.
3. The Principal Secretary, Revenue Department (State Tax), State of Telangana, Secretariat, Hyderabad-500 004.
4. The Secretary, Ministry of Finance, Department of Revenue, Union of India, New Delhi-110 001.
5. One CC to SRI KARAN TALWAR, Advocate [OPUC]
6. Two CCs to SRI SWAROOP OORILLA, Special Government Pleader for State Tax, High Court for the State of Telangana at Hyderabad [OUT]
7. One CC to SRI PULIMAMIDI SHASHIDHAR REDDY, S.C. for Central Government [OPUC]
8. Two CD Copies

MP
BS

HIGH COURT

DATED:23/09/2025



ORDER

WP.No.28654 of 2025

DISPOSING OF THE WRIT PETITION

WITHOUT COSTS