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

WEDNESDAY, THE TWENTY NINTH DAY OF OCTOBER
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: 32614 OF 2025

Between:

S. Ashok Kumar, Managing Director, M/s. Annai Infra Developers Limited, Maharashtra Address. GSTIN. 27AAHCA5802A1Z7 4th Floor, 402 Orchid, Orchid Builing, Navghar Road, Mulund East, Mumbai, Maharashtra 400081. Registered Head Office. 2/9, A.N. Towers, Dr. Sathiyamoorthy Hospital Road Opp, 2/5, Perundurai Road, Erode, Tamil Nadu - 638 011.

...PETITIONER

AND

1. The Commissioner of Customs and Central Tax, Office of the Commissioner of Customs AND Central Tax, Appeals I Commissionerate 7th Floor, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.
2. The Additional Commissioner of Central Tax, Rangareddy GST Commissionerate, GST Bhavan, H. No.. 1-98/7/43, VIP Hills, Jaihind Enclave, Madhapur, Hyderabad-500 016.
3. The Additional Director of DGGI, Vishakapattnam Zonal Unit, D. No. 28-14-17, Suryabagh, Besides Melody Theatre, Vishakapatnam - 530 020.
4. The Additional Director of DGGI, Hyderabad Zonal Unit, H. No. 1-11-222/4, Lane Opp. HDFC Bank, Hyderabad - 500 016.

...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 or order or more in direction or Writ of Mandamus and call for the records pertaining to the issued impugned Order in Appeal No. HYD-GST-RRC-APP1-COMMR-052-25-26 dated 30.09.2025 issued by the 1st Respondent and set-aside the same.

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 pleased to stay the operation of the issued impugned Order in Appeal No. HYD-GST-RRC-Ae131-COMMR-052-25-26 dated 03.09.2025 by the 1st Respondent till the disposal of the present Writ Petition.

Counsel for the Petitioner : SRI MADANU NARESH

Counsel for the Respondents :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.32614 of 2025

ORDER:

Learned counsel Sri S.Durairaj, representing learned counsel Sri Madanu Naresh, appears for the petitioner.

Sri Dominic Fernandes, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs, appears for the respondents.

2. The order-in-appeal dated 30.09.2025 is under challenge. The appellate authority has refused to interfere in the order-in-original imposing penalty upon the petitioner.

3. During the course of hearing, it has been brought to the notice of this Court that the Goods and Services Tax Appellate Tribunal (hereinafter referred to as, "the Appellate Tribunal") has started functioning.

4. Section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as, "the Act"), provides for appeal to the Appellate Tribunal. The Appellate Tribunal has issued an order dated 24.09.2025 under Rule 123 of the Goods and Services Tax Appellate Tribunal (Procedure) Rules, 2025, classifying the category of cases specified in column (2) of the table appended thereto and the period during which the appeal under Section 112 of the Act would be filed before the Appellate Tribunal corresponding to the period during which the orders of the appellate authority were passed.

5. In the present case, since the impugned order-in-appeal is dated 30.09.2025, the window for filing such appeal is prescribed at serial No.5 i.e., commencing on 01.02.2026 or any date succeeding such date being not later than 30.06.2026. It is further brought to the notice of this Court that the Finance Act, 2025, notified on 29.03.2025, has amended Section 112 of the Act and added the proviso to sub-section (8) thereto, which reads as under:

"**130**. In section 112 of the Central Goods and Services Tax Act, in sub-section (8), the following proviso shall be inserted, namely:-

"Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent of the said penalty, in addition to the amount payable under the proviso to sub-section (6) of section 107 has been paid by the appellant.""

6. This Court has, in similar circumstances, relegated the aggrieved petitioner to prefer an appeal before the Appellate Tribunal within a timeframe. It has also been ordered that subject to deposit of 10% of the tax liability within the aforesaid time, no coercive action be taken against the petitioner therein till the decision of the Appellate Tribunal in the said appeal.

7. In the instant case, there is no imposition of tax liability. But, the liability of penalty has been imposed. Under the amended proviso to Section 112 of the Act, the aggrieved person has to deposit a sum equal to 10% of the penalty in addition to the amount payable under the proviso to sub-section (6) of Section 107 of the Act paid by the appellant.

8. Learned counsel for the petitioner submits that since the penalty is of substantial amount, the petitioner may be permitted to make 10% deposit of the penalty amount within a period of eight weeks. He also submits that certain amount deposited by the firm of the petitioner as tax liability in Form GST DRC-03 during the investigation may be permitted to be deducted from the 10% of the penalty amount to be deposited as a condition of pre-deposit for preferring the appeal.

9. To the aforesaid submission, the learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs appearing for the respondents has taken objection. He submits that the amount paid by the firm of the petitioner as per Form GST DRC-03 is towards the tax liability. The order-in-original as affirmed by the impugned order-in-appeal only imposes penalty. Therefore, the petitioner cannot take the benefit of making any deposit or payments towards tax liability during the investigation proceedings.

10. Upon consideration of the rival submissions of the parties, in the facts and circumstances noted above, the writ petition is disposed of without expressing any opinion on the merits of the case and by giving liberty to the petitioner to prefer an appeal before the Appellate Tribunal within the window period prescribed under the order dated 24.09.2025 issued by the Appellate Tribunal. The petitioner shall deposit 10% of the penalty amount within a period of eight weeks from today. If the petitioner makes such pre-deposit within the aforesaid period, no coercive action be taken against the petitioner till the decision of the Appellate Tribunal in the appeal to be filed. We, however, do not accept the contention of the petitioner that the amount, if any, paid by the firm of the petitioner towards the tax liability during investigation can be adjusted as against pre-deposit to be made for the purposes of preferring the appeal before the Appellate Tribunal. However, there shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

SD/-K.BHAVANI SWAMY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Commissioner of Customs and Central Tax, Office of the Commissioner of Customs AND Central Tax, Appeals I Commissionerate 7th Floor, GST Bhavan, L.B. Stadium Road, Basheerbagh, Hyderabad - 500 004.
2. The Additional Commissioner of Central Tax, Rangareddy GST Commissionerate, GST Bhavan, H. No.. 1-98/7/43, VIP Hills, Jaihind Enclave, Madhapur, Hyderabad-500 016.
3. The Additional Director of DGGI, Vishakapattnam Zonal Unit, D. No. 28-14-17, Suryabagh, Besides Melody Theatre, Vishakapatnam - 530 020.
4. The Additional Director of DGGI, Hyderabad Zonal Unit, H. No. 1-11-222/4, Lane Opp. HDFC Bank, Hyderabad - 500 016.
5. One CC to SRI MADANU NARESH, Advocate. [OPUC]
6. One CC to SRI DOMINIC FERNANDES, Senior Standing Counsel for CBIC. [OPUC]
7. Two CD Copies.

BSK

HIGH COURT

DATED:29/10/2025



ORDER

WP.No.32614 of 2025

DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

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ASV
1/11/25