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

THURSDAY,THE TWENTY THIRD 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: 31795 OF 2025

Between:

M/s. S.S. Infra, 1-110/A/48,Kondapur, Gopalreddynagar, Serilingampally, Hyderabad - 500084, Rep. by its Partner, Mr. Nampally Swamy.

...PETITIONER

AND

1. The Union of India, rep. by its Secretary (Finance), Ministry of Finance, North Block, New Delhi -110001.
2. The State of Telangana, Rep. by the Principal Secretary to the Government, Revenue (CT) Department, Dr. B.R. Ambedkar Telangana Secretariat Building, Hyderabad, Telangana.
3. The Superintendent of Central Tax, Kondapur GST Range, Ranga Reddy Commissionerate, 10-3-301-203, 4th Floor, Serene Heights, Humayun Nagar, Masab Tank, Hyderabad, Telangana -500028.
4. The Branch Manager, AXIS Bank, H. No. 1-11/4/A/1, Allwyn Cross Roads, Madhinaguda, Miyapur, Hyderabad, Telangana -500049.
5. The Assistant Commissioner of Central Tax, Madhapur CGST Division, Rangareddy CGST Commissionerate, 10-3-301-203, 4th Floor, Serene Heights, Humayun Nagar, Masab Tank, Hyderabad, Telangana -500028.

...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 in the nature of MANDAMUS declaring that Section 16(2)(c) and Section 41(2) of the GST Act, 2017, are ultra vires. violative of Article 14 of the Constitution of India and consequently quash the same or in the alternative declare that they should be read down in so far as they impose obligation on the recipient to ensure payment of tax by supplier to the Government and further obligates the recipient to verify admissibility of ITC availed by the supplier. and consequently set aside the impugned Order-in-Original No. 05/2023-24-Adj.(SUPDT)-GST, dated 06-10-

2023, passed by the Third Respondent for the Tax Periods 2017-18 (July, 2017 to March, 2018), 2018-19 and 2019-20 under the GST Acts, 2017, which is also illegal as it was passed for multiple years and not valid even on merits

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 grant stay of operation of the Letter, dated 25-09-2025, issued by the Fifth Respondent to the Fourth Respondent Bank herein

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 grant stay of all further proceedings, including recovery of Tax, Penalty and Interest, pursuant to the impugned Order-in-Original No. 05/2023-24-Adj.(SUPDT)-GST, dated 06-10-2023, passed by the Third Respondent for the Tax Periods 2017-18 (July, 2017 to March, 2018), 2018-19 and 2019-20 under the GST Acts, 2017

Counsel for the Petitioner: SRI. G. NARENDRA CHETTY

Counsel for the Respondent No.1: SRI N. BHUJANGA RAO
Deputy Solicitor General of India

Counsel for the Respondent No.2: GP FOR COMMERCIAL TAX

Counsel for the Respondent Nos. 3&5: SRI DOMINIC FERNANDES,
SENIOR SC FOR CBIC

Counsel for the Respondent No.4:--

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.31795 of 2025

Order:

Heard Mr. G.Narendra Chetty, learned counsel for the petitioner and Mr. Dominic Fernandes, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs (CBIC) appearing for respondents No.3 and 5.

2. The Order-in-Original dated 06.10.2023 (annexure P2) passed by respondent No.3 imposing tax, interest and penalty for the period 2017-18 to 2019-20, along with the *vires* of Sections 16(2)(c) and 41(2) of the Central Goods and Services Tax Act, 2017 (for short 'the Act'), is under challenge.

3. Learned counsel for the petitioner has reiterated the averment made in the Writ Petition that for the default of the supplier in depositing the tax, petitioner has been made liable. Therefore, apart from challenging the impugned Order-in-

Original, petitioner has also challenged the *vires* of Sections 16(2)(c) and 41(2) of the Act.

4. On the part of the respondents, attention has been drawn to the discussion and findings rendered by the proper officer in order to submit that the petitioner claimed ITC without deposit of tax by the supplier and without there being any such reflection in GSTR-2A or in the alternative, without producing any certificate of the Chartered Accountant of the supplier that the supplier has deposited the tax in lieu of the payment made against the invoices issued by it.

5. Learned Senior Standing Counsel for CBIC has also taken strong objection to the entertainability of the Writ Petition on the ground of delay much beyond the time prescribed under Section 107(4) of the Act and the ratio laid down by the Apex Court in **Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited**[1].

[1] (2020) 19 SCC 681

6. Learned counsel for the petitioner has drawn the attention of this Court to interim order dated 18.03.2025, passed by Coordinate Bench of this Court in W.P.No.6880 of 2025 and analogous Writ Petitions of 2025.

7. From a perusal of the aforesaid interim order, it appears that besides challenging Section 16(2)(c) of the Act, Order-in-Original dated 27.11.2024, was assailed therein, which was within the time prescribed for preferring an appeal before the appellate authority.

8. Petitioner has not been able to offer any explanation worth its name to a delay of more than two years in approaching this Court. It appears from reference to the garnishee notice dated 01.09.2025, issued by respondent No.5 in the name of the petitioner's banker, respondent No.4, that only thereupon, the petitioner has chosen to prefer the instant Writ Petition to assail the impugned Order-in-Original and also the *vires* of Section 16(2)(c) of the Act.

9. Learned counsel for the petitioner has sought to explain that respondent No.5 has also subsequently intimated the petitioner's banker, respondent No.4, on 25.09.2025 that the tax payer had debited an amount of Rs.4,59,362/- along with interest, whereafter an amount of Rs.5,83,412/- still remains due, which may be marked as lien immediately. It is submitted that the said balance amount due against the petitioner does not reflect from the garnishee notice dated 01.09.2025 and it reflects only a sum of Rs.4,66,168.50 ps., including the GST demand and penalty thereupon. Therefore, petitioner may be compelled to pay much larger amount despite no such liability being assessed by the proper officer while passing the impugned Order-in-Original.

10. So far as the above contention of the petitioner is concerned, petitioner is free to approach the proper officer, respondent No.3, who has passed the impugned Order-in-Original dated 06.10.2023, or respondent No.5, who has issued the garnishee notice dated 01.09.2025, so that his statements can be

reconciled with the tax deposited against the liability fixed under the impugned Order-in-Original, after giving an opportunity to the petitioner. However, on account of gross delay in approaching this Court in writ jurisdiction against the impugned Order-in-Original dated 06.10.2023, we are not inclined to entertain the Writ Petition following the decision of the Apex Court in **Glaxo Smith Kline Consumer Health Care Limited** (supra), which laid down the principles governing the entertainabilty of Writ Petitions when the statutory period of appeal in taxing statutes is over. Para 19 of the said decision is extracted hereunder:

> "**19**. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in *Electronics Corpn. of India Ltd.* [*Electronics Corpn. of India Ltd.* v. *Union of India*, 2018 SCC OnLine Hyd 21 : (2018) 361 ELT 22] , which had adopted the view taken by the Full Bench of the Gujarat High Court in *Panoli Intermediate (India) (P) Ltd.* v. *Union of India* [*Panoli Intermediate (India) (P) Ltd.* v. *Union of India*, 2015 SCC OnLine Guj 570 : AIR 2015 Guj 97] and also of the Karnataka High Court in *Phoenix Plasts Co.* v. *CCE* [*Phoenix Plasts Co.* v. *CCE*, 2013 SCC OnLine Kar 10432 : (2013) 298 ELT 481] . The logic applied in these decisions proceeds on fallacious

premise. For, these decisions are premised on the logic that provision such as Section 31 of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction — by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in *ONGC* [*ONGC* v. *Gujarat Energy Transmission Corpn. Ltd.*, (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] In other words, the fact that the High Court has

wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose."

11. The instant Writ Petition is, accordingly, disposed of with the observation made above, without interfering with the impugned Order-in-Original dated 06.10.2023. No costs.

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

SD/- SRI P. PONNA KRISHNA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary, Union of India, (Finance), Ministry of Finance, North Block, New Delhi -110001.
2. The Principal Secretary to the Government, Revenue (CT) Department, Dr. B.R. Ambedkar Telangana Secretariat Building, Hyderabad, Telangana.
3. The Superintendent of Central Tax, Kondapur GST Range, Ranga Reddy Commissionerate, 10-3-301-203, 4th Floor, Serene Heights, Humayun Nagar, Masab Tank, Hyderabad, Telangana -500028.
4. The Branch Manager, AXIS Bank, H. No. 1-11/4/A/1, Allwyn Cross Roads, Madhinaguda, Miyapur, Hyderabad, Telangana -500049.
5. The Assistant Commissioner of Central Tax, Madhapur CGST Division, Rangareddy CGST Commissionerate, 10-3-301-203, 4th Floor, Serene Heights, Humayun Nagar, Masab Tank, Hyderabad, Telangana -500028.
6. One CC to SRI. G. NARENDRA CHETTY, Advocate [OPUC]
7. One CC to SRI. N. BHUJANGA RAO, DEPUTY SOLICITOR GENERAL OF INDIA [OPUC]
8. Two CCs to GP FOR COMMERCIAL TAX , High Court for the State of Telangana, at Hyderabad [OUT]
9. One CC to SRI. DOMINIC FERNANDES, SC FOR CBIC [OPUC]
10. Two CD Copies

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HIGH COURT

DATED:23/10/2025

ORDER

WP.No.31795 of 2025



DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

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kpdv
4/11/25