

APHC010604712024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3529]

MONDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 31510/2024

Between:

1. SONA ENTERPRISES, PROP. SHAFI MOHMAD OFFICE AT. 21-35-8, THUMMALAPALLI VARI STREET KOTHA ROAD, VISHAKHAPATNANRI-530001, ANDHRA PRASH

...PETITIONER

AND

1. THE STATE OF AP, REP BY ITS PRINCIPAL SECRETARY, STATE TAX DEPARTMENT, SECRETARIAT BUILDINGS, VELAGAPUDI, AMARAVATI

2. ADDITIONAL COMMISSIONER, OFFICE OF PRINCIPAL COMMISSIONER OF CENTRAL TAX VISAKHAPATNAM CENTRAL GST COMMISSIONERATE GST BHAVAN, PORT AREA, VISAKHAPATNAM-530035, ANDHRA PRADESH

...RESPONDENT(S):

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 may be pleased to issue a Writ or and Order or Direction, more particularly in the nature of a Writ of Mandamus declaring the Order bearing No. VSP-CGST-ADC- 011-2024-25 dated 10.07.2024 and the Show Cause Notice bearing C. No. V/74/2021-Audit (Vizag) dated 27.05.2022 passed by the Respondent No.2 under Section 74 of the CGST Act as arbitrary, illegal, colourable exercise of power and contrary to the provisions of the CGST Act apart from being

violative of the fundamental rights guaranteed to the Petitioner under Article 14, 19 and 21 of the Constitution of India and consequently set aside the same, and pass

IA NO: 1 OF 2024

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 may be pleased to direct the Respondent No.2 not to take any coercive steps pursuant to Order bearing No. VSP-CGST-ADC-011- 2024-25 dated 10.07.2024 passed by the Respondent No.2 pending disposal of the above Writ Petition and pass

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 may be pleased to vacate the interim order dt. 08.01.2025 passed in IA no. 1 of 2024 in the instant Writ Petition No. 31510 of 2024 and pass

Counsel for the Petitioner:

1.JYOTHI RATNA ANUMOLU

Counsel for the Respondent(S):

1.SANTHI CHANDRA (Sr. Standing Counsel for CBIC)

2.GP FOR COMMERCIAL TAX

Date of Reserved : 30.03.2026

Date of Pronouncement : 27.04.2026

Date of Upload : 27.04.2026

The Court made the following Order: *(per Hon'ble Sri Justice R. Raghunandan Rao)*

The petitioner, who is a registered person, under the Goods & Services Tax Act, 2017 [for short "the GST Act"], is in the business of trading of ferrous waste and scrap etc. As part of his business, the petitioner purchases scrap from Indian Railways. The GST, payable on purchase of such scrap from Indian Railways is to be discharged by the purchaser under the reverse charge mechanism.

2. An audit was conducted, on the books of the petitioner, for the period 2017-2018 and 2018-2019. In the course of this audit, it was found that the petitioner had deposited, in cash, in his electronic credit ledger, the GST payable under the reverse charge mechanism. However, the necessary debit entries, appropriating these amounts, to the Government were not carried out. Apart from this, the audit report also reveals that the petitioner without passing necessary debit entries and appropriating the amount to the Government account, had availed input tax credit, that would arise in relation to payments made under the reverse charge mechanism. The petitioner, immediately after the audit exercise had been conducted, had debited the cash credit available in his electronic credit ledger, to the Government. However, the assessment and penalty proceedings were initiated against the petitioner under Section 74 of the GST Act.

3. The show-cause notice, issued, in the course of these proceedings stated as follows:-

- 1) Though, the petitioner had deposited, in cash, the GST paid on reverse charge mechanism, in his electronic credit ledger, the same was not appropriated to the Government account and consequently, there was no payment of the GST.
- 2) The petitioner, without appropriating, the GST payable under the reverse charge mechanism, to the Government account, had claimed input tax credit, in relation to the amounts which he had paid into cash in his electronic credit ledger. This would amount to wrongful availment of Input tax credit, as such credit would only be available, in relation to the amounts deposited in the electronic credit ledger of the petitioner, which had been appropriated to the Government account.
- 3) As the said GST liability was not cleared by the petitioner, till the audit had been conducted, there was contravention of Section 16 of the Central Goods & Services Act, 2017 [for short “the CGST Act”] and would fall within ambit of Section 74 of the GST Act.
- 4) As there was delay in debiting the GST payment, the petitioner would also be liable to pay interest for the period of delay.

4. In response to these contentions, the petitioner filed his objections. The petitioner contended that the petitioner had paid the GST, under reverse charge mechanism, within time by depositing cash in his electronic credit ledger. The petitioner, contended that under the earlier Andhra Pradesh Value Added Tax regime etc., the tax payers were only

required to deposit the tax and there was no further step of debiting the same to the Government. The petitioner contended that he had proceeded on that basis and had assumed that such payment was sufficient for discharging his liability. The petitioner further contended that the petitioner was ignorant of the new filing system under the GST Act and the Rules and the non debit of the cash paid, was at best an irregularity which may be treated as a case of misreporting rather than suppression of fact.

5. The petitioner contended that in such circumstances, the question of penalty would not arise and the provisions of Section 74 of the GST Act cannot be pressed into service. It was contended that none of the three ingredients of fraud, willful misstatement or suppression of facts, set out in Section 74 of the GST Act, are available in the present case.

6. The 2nd respondent, after considering the submissions passed an order of assessment and penalty, dated 27.05.2022 under Section 74 of the GST Act. In this order, the 2nd respondent took the view that mere payment of amounts into the electronic credit ledger would not amount to payment of GST, as required under the provisions of the GST Act. He took the further stand that the availment of input tax credit, on the amount deposited in the electronic credit ledger of the petitioner was in contravention of the GST Act, as such input tax credit could have been availed only after the amount had been debited in the electronic ledger of the petitioner, in favour of the Government. The 2nd respondent also took the view that the appropriation of the amount available in the electronic credit ledger of the petitioner had

occurred only after the audit report had revealed the aforesaid nonpayment of tax and as such, adjustment of the said amount cannot be taken to be mere case of misreporting and it would amount to a case of suppression of fact and willful misstatement.

7. The 2nd respondent, in view of the above findings had ordered recovery of an amount of Rs.1,11,41,108/- which was to be appropriated against the amount had already paid; recovery of interest of Rs.60,87,401/-; penalty of Rs.1,11,41,109/-, under Section 74(9) of the CGST Act read with Section 20 of the IGST Act, 2017 and Section 122 2(b) of the CGST Act, 2017; recovery of amount of GST at Rs.1,11,41,108/- as wrongful availment of input tax credit availing violation of Section 17(5)(i) of the CGST Act and Section 74(9) of the CGST and recovery of interest on Rs.1,11,41,108/- arising out of wrongful availment of input tax credit and another penalty of Rs.1,11,41,108/- under Section 74(9) of the CGST read with the relevant provisions of the IGST Act, 2017.

8. Aggrieved by this order, the petitioner approached this Court by way of the present Writ Petition. It may also be noted that the petitioner had earlier filed W.P.No.15151 of 2023 against the levy of interest in relation to a similar issue after March-2019 which is pending. However, the pendency of the said Writ Petition would not be relevant for the present purposes.

9. Heard Smt. Jyothi Ratna Anumolu, learned counsel for the petitioner and Smt. Santhi Chandra, learned Standing Counsel appearing for the respondents. This Court has also gone through the pleadings filed in the

form of this Writ Petition, the affidavit filed in support of the vacate petition, a reply affidavit filed by the petitioner and the Written arguments filed by both sides.

10. The case of the Revenue is that the payment of tax by debiting the electronic credit ledger, by the petitioner occurred solely because of the discrepancies being pointed out during the audit and not on the account of the petitioner realizing the mistake by himself and making necessary corrections. The Revenue contends that the petitioner would not have made necessary debit entries and the Revenue would not have been able to recover this amount after passage of certain time inasmuch as the period for assessment as per the Section 73 of the GST Act or the Section 74 of the GST Act would have expired. The Revenue therefore contends that this was an exercise of evasion of tax and the same could be interdicted only on account of the timely conduct of audit of the accounts of the petitioner.

11. Smt. Jyothi Ratna Anumolu, learned counsel for the petitioner on the other hand would contend that there was no such intention on the part of the petitioner and the petitioner had demonstrated his bonafides by depositing the entire tax amount due from the petitioner, by payment of cash. She also contends that the petitioner, due to ignorance of law and on the assumption that the system of payment of tax remain the same under the APVAT Act as well as the GST regime had inadvertently omitted to make the necessary debit entries and the same cannot be treated as evasion of tax which would fall within the ambit of Section 74 of the GST Act.

12. Apart from the question of whether the aforesaid actions of the petitioner would amount to evasion of tax, the further issue that remains is the availment of input tax credit, in relation to the said cash amounts paid into the electronic credit ledger of the petitioner. The 2nd respondent took the view, which is supported by Smt. Santhi Chandra, learned Standing counsel for the respondents that the said action was a deliberate act of suppression of fact and wrongful availment of input tax credit by virtue of such suppression. She would contend that the wrongful availment of input tax credit would not only entail a recovery of such input tax credit but also levy of penalty equivalent to the input tax credit which has been wrongful availed.

13. Another aspect that means to be considered is the fact that the show-cause notice as well as the order of assessment under challenge are composite proceedings relating to two separate assessment periods namely 2017-2018 and 2018-2019. This Court, in the case of ***SJ Constructions Vs. The Assistant Commissioner & Ors***, in W.P.No.11028 of 2025 & batch, had held that such composite proceedings are not permissible. However, learned counsel for the petitioner also seeks determination of all the aforesaid issues raised by both sides.

CONSIDERATION OF THE COURT:-

14. At the outset, it may be noted that there is no dispute as to the quantum of tax payable by the petitioner and the entire dispute revolves only around the question of whether such tax is said to have been paid or not, in

time, and whether availment of input tax credit, on the ground that such tax had been paid was correct or not and the consequences thereupon.

15. In the present case, the petitioner has deposited cash, under the reverse charge mechanism to the extent of his GST liability in his electronic credit ledger. There is no dispute, that the cash deposited by the petitioner covers the GST liability of the petitioner. There is also no dispute that these amounts had been paid within the stipulated time. However, the dispute arises on account of the petitioner omitting to debit the cash, deposited by him, in his credit ledger, in favour of the Government.

16. The provisions of Section 49(1) of the CGST Act read with Rule 87(6) & (7) of the CGST Rules makes it clear that the deposit of cash or the credit of input tax credit into the electronic ledger of the tax payer would not amount to payment of tax. Such payment of tax would occur only when the necessary amount is appropriated to the Government exchequer. The Hon'ble High Court of Jharkhand, in the case of **RSB Transmission (India) Limited vs. Union of India**¹, in its Judgment dated 18.10.2022, in W.P(T).No.23 of 2022 had an occasion to gone into these issues and had taken the view set out above by this Court. In such circumstances, it must be held that mere deposit of cash into the ledger of the tax payer would not be sufficient to claim discharge of the GST liability of the tax payer. As the petitioner had made necessary debit entries for such appropriation, albeit on a later date, it must be held that the petitioner has cleared the GST liability arising on account of

¹2022(10) LCX0164

the purchaser material from the Indian Railways. However, since such appropriation did not occur within the time stipulated under the Act and the Rules. The petitioner would be liable to pay interest for the period of delay.

17. The petitioner, without necessary appropriation, is said to have claimed the input tax credit, to the extent of the amounts which had been credited into the electronic credit ledger of the petitioner. Under Section 16 of the GST Act, stipulates that such credit can only be taken after the necessary credit is available in the electronic credit ledger. It is true that the petitioner could not have availed of the input tax credit, arising out of the payments made by him, as the same had not yet been appropriated to the Government. However, the view of the 2nd respondent that the said input tax credit should be recovered may not to be correct. The input tax credit, wrongful availed, without underlying payment of tax, could always be recovered. However, since the petitioner had made necessary debit entries, though later in point of time, the 2nd respondent could not have sought recovery of input tax credit apart from appropriating the amounts debiting to the account of the Government. To that extent, the order of the 2nd respondent does not appear to be correct.

18. The primary dispute is on the question of whether the omission of the petitioner to debit the amounts paid into his electronic credit ledger, in favour of the Government was an act of inadvertent omission or a case of suppression of fact with the intention of evading of tax, are questions of fact. This question would have to be considered by the primary authority, in the

light of the above, objections of the petitioner. That exercise does not appear to have been conducted. Apart from this, the impugned order suffers from an inherent defect of being a composite order covering different tax periods, which requires the said order to be set aside. In such circumstances, as the matter would have to be remanded back to the 2nd respondent for passing separate orders, in relation of the separate periods, it would only be appropriate that the primary dispute is left open for reconsideration by the 2nd respondent on the material that may be placed before him by the petitioner.

19. Accordingly, this Writ Petition is disposed of setting aside the impugned order, dated 27.05.2022 and remanding the matter back to the 2nd respondent for passing separate orders of assessment and penalty, if any, in relation to these two tax periods, after considering the objections that may be raised, by the petitioner. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

Date:- 27.04.2026
BSM

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

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