APHC010007562024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3529]**
(Special Original Jurisdiction)

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: 647/2024

Between:

1. M/S. FAIR GROWTH MARKETING,, 50-50-29/6, SRI GURUDHAM BUILDING, B. S. LAYOUT,VISAKHAPATNAM-530013. REP. BY ITS PROPRIETOR, MR. KAMAL KUMAR JAIN

...PETITIONER

AND

1. THE ADDITIONAL COMMISSIONER GSTAPPEALS, THE APPELLATE AUTHORITY, O/O. THE COMMISSIONER OF CENTRAL TAX AND CUSTOMS (APPEALS), 3-30-15, RING ROAD, GUNTUR-522006.
2. THE SUPERINTENDENT OF CENTRAL TAX, AKKAYYAPALEM CGST RANGE, 10-50-22, 3RD. FLOOR, SIRIPURAM, LANE OPP. HSBC MAIN GATE, VISAKHAPATNAM-530003
3. THE UNION OF INDIA, REP. BY THE PRINCIPAL SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, 136A, NORTH BLOCK, NEW DELHI-110001.
4. THE ASSISTANT/DEPUTY COMMISSIONER OF CENTRAL TAX, VISAKHAPATNAM NORTH CGST DIVISION, 10-50-22, 3RD. FLOOR, SIRIPURAM, LANE OPP. HSBC MAIN GATE, VISAKHAPATNAM-530003
5. GOODS AND SERVICES TAX COUNCIL, THROUGH ITS CHAIRMAN, GOODS AND SERVICES TAX, SECRETARIAT 5TH FLOOR, TOWER-V, JEEVAN BHARATHI BUILDING, JANPATH ROAD, CONNAUGHT

PLACE, NEW DELHI

...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 topleased to issue Writ of Mandamus or any other appropriate Writ or Order or Direction declaring the Order-in-Appeal vide No. VIZ-GST-000-APP-045-23-24 and DIN 20230955AS0000111FFB vide Appeal No. 21/2023(V) GST dated 25.09.2023 came to be passed by the 1st Respondent by rejecting the appeal filed, confirming the disallowance of the transitional claim of Rs.35,80,065/-by the 2nd Respondent , the 2nd respondent passed Order- in-Original vide No.02/2022-23/TRAN-1/MR/AKP, dated 14.02.2023, as illegal, unjust, arbitrary, without jurisdiction and the same is in violation of Principles of Natural Justice and Rule of Law and consequently quash and set aside the Proceedings, dated 25.09.2023 of the 1st Respondent and proceedings, dated 14.02.2023 as null and void and pass such other order or orders as the Honble Court may deem fit and proper in the circumstance of the case. Main Prayer was amended as per c.o.dt.19.06.2024 vide I.A.No.2 of 2024 in W.P.No.647 of 2024.

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 the humbly urges the Hon'ble Court to direct the respondents to grant the credit as the denial of transitional relief is deviation of he scheme and objective of the GST, meaning thereby GST was introduced with an objective of removing the cascading effect of taxes by providing seamless flow of input tax credit on all inputs, which can be used for payment of output tax. Statement of objects and Reasons of the GST Act through 10U' Constitutional Amendment Act, 2016 (Annexure - PIO) is being defeated by denying the transitional relief.

IA NO: 2 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 pleased to permit the Petitioner to amend the main prayer in the W.P.No.647 of 2024 instead of the following: "The petitioner humbly urges the Hon'ble Court to direct the respondents to grant the credit as the denial of transitional relief is deviation of the scheme and objective of the GST, meaning thereby

GST was introduced with an objective of removing the cascading effect of taxes by providing seamless flow of input tax credit on all inputs, which can be used for payment of output tax. Statement of objects and Reasons of the GST Act through 101st' Constitutional Amendment Act, 2016. (Annexure-PIO) is being defeated by denying the transitional relief" Instead of "It is therefore prayed that the Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate Writ or Order or Direction declaring the Order-in-Appeal vide No. VIZ-GST-OOO-APP -045- 23-24 and DIN: 20230955AS000011IFFB vide Appeal No. 21/2023(V) GST dated 25.09.2023 came to be passed by the Respondent by rejecting the appeal filed, confirming the disallowance of the transitional claim of Rs.35,80,065/- by the 2nd respondent, the 2nd respondent passed Order-in-Original vide No.02/2022-23/TRAN-l/MR/AKP, dated 14.02.2023, as illegal, unjust, arbitrary, without jurisdiction and the same is in violation of Principles of Natural Justice and Rule of Law and consequently quash and set aside the Proceedings, dated 25.09.2023 of the Respondent and proceedings, dated 14.02.2023 as null and void and pass

IA NO: 3 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 receive the reply to counter affidavit on record by allowing the leave petition in the above writ petition and pass

Counsel for the Petitioner:

1. C SANJEEVA RAO

Counsel for the Respondent(S):

1. JOSYULA BHASKARA RAO (SR. SC FOR CBIC)
2. Y V ANIL KUMAR (Central Government Counsel)

The Court made the following Order:

(per Hon'ble Sri Justice R. Raghunandan Rao)

The petitioner is a dealer in electronic goods and was distributing the goods manufactured by a particular manufacturer.

2. With the advent of the GST regime, which came into effect from 01.07.2017, the credit available for such manufacturer and other registered persons, under the CST Act, Service Tax Act and the VAT Act, had to move to the GST regime. For that purpose, Section 140 of the GST Act was incorporated to enable transition of the tax credit available to various persons, under these Acts, to the GST regime. Apart from Section 140, the Central Board of Indirect Taxes had been issuing circulars and notifications for setting out the procedures that should be followed for such transition of tax credit to the GST regime.

3. In the present case, the petitioner herein sought to transition certain credit amounts, paid by his manufacturer, under the Central Excise Act, upon obtaining registration under the GST Act.

4. The claim of the petitioner for transition of the Central Excise, paid by its manufacturer, was rejected, by an order, dated 14.02.2023. The petitioner, being aggrieved by the said order, had moved an appeal, which also came to be dismissed on 25.09.2023, by the Additional Commissioner of Central Act (GST- Appeals), Guntur. Aggrieved by the said order, the petitioner has approached this Court, by way of the present Writ Petition.

5. Sri C. Sanjeeva Rao, learned counsel for the petitioner, while reiterating the grounds raised in the Writ Petition, would contend that the petitioner was not given adequate opportunity to upload all the documents on account of the glitches in the portal. The claim of the petitioner was rejected when these documents were produced manually before the Authorities.

6. Sri Josyula Bhaskara Rao, learned Standing Counsel appearing for the respondents would, on the other hand, contend that the necessary documents had not been uploaded in the portal and necessary credit documents were not produced before the Authorities, due to which the petitioner was not given any benefit and his application was rejected.

7. Paragraph No.8 of the Order-in-Appeal reads as follows:

> *08. Be that as it may, it is also observed that the original authority has rejected the impugned claim for the reasons that the appellant has not produced documentary evidence such as Credit transfer documents ('CTD') along with invoices as specified in the Notification No.182/14/2022-GST dated 10.11.2022 and Notification No.21/2017-Central Excise (N.T) dated 30.06.2017. The appellant has disputed the same by relying upon the Clause (viii) of the Notification No.21/2017-Central Excise (N.T) dated 30.06.2017. However, there is no contention on the part of the Appellant that the relevant invoices were issued in the name of the appellant, and, further, the appellant never put forth any evidence showing that they are in possession of invoices issued by manufacturer in respect of stock lying on hand which were received from the importers/ first stage dealers, during the appeal*

> *proceedings. Thus, in absence of proper evidence, it cannot be construed that the appellant can claim credit only on the basis of invoices. In such a scenario, CTD are required to be produced along with invoices for claiming transitional credit, without which the adjudicating authority cannot come to a conclusion that whether the impugned claim by the appellant is proper or not. In view of the above, I am not persuaded to accept the contentions of the appellant. Therefore, I am of opinion that the rejection and disallowance of the impugned credit as ordered by the adjudicating is sustainable in law.*

8. This Paragraph clarifies that the relief could not be given to the petitioner on the ground that necessary documents had not been produced by the petitioner.

9. Sri C. Sanjeeva Rao, learned counsel for the petitioner, on the other hand, would contend that all necessary documents were produced and relied upon various documents filed along with the present Writ Petition.

10. As there is some controversy as to whether such documents were produced or not and whether the petitioner could not upload the same, in the portal, on account of the glitch in the portal, it would only be appropriate that the petitioner is given one further opportunity to make out his case.

11. It would also be noted that the Central Excise had been paid on the goods and the benefit of transitioning the Central Excise to the GST regime cannot be stifled by the Authorities. Such an action would be clearly arbitrary and unfair, taking away the property of the present claim.

12. In these circumstances, the Order-in-Appeal, dated 25.09.2023, as well as the Original Order, dated 14.02.2023, are set aside and the matter is remanded back to the respondents to consider the documents that have been filed by the petitioner and to call for other such documents which are necessary for ascertaining whether the Central Excise paid by the manufacturer has been reimbursed to the manufacturer of the petitioner. For this purpose, the petitioner shall be served with a notice of the documents required by the Registering Authority and the Registering Authority shall consider all such documents that may be produced by the petitioner, pursuant to such requisition and thereafter, pass orders on the application of the petitioner for transitioning the Central Excise paid by the manufacturer to the ledger of the petitioner.

13. In the circumstances, this Writ Petition is allowed, in the above terms. There shall be no order as to costs.

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

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R. RAGHUNANDAN RAO, J

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T.C.D. SEKHAR, J

Date:27.04.2026
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THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 647/2024

(per Hon'ble Sri Justice R. Raghunandan Rao)

27.04.2026

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