IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-07-2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

WP No. 27544 of 2026
and W.M.P.Nos.30177 & 30180 of 2026

Indian Bank
Rep. By General Manager – Chief Financial
Officer, Mr.Sunil Jain,
No.254-260, Avvai Shanmugam Salai,
Chennai 600 014.

..Petitioner(s)

Vs

The Assistant Commissioner CGST and Central
Excise, Egmore Division,
No.2054, I Block, II Avenue
12th Main Road,
Anna Nagar, Chennai
TamilNadu-600 040.

..Respondent(s)

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in FORM GST SPL-05 Reference No. ZD3301260034118 dated 02.01.2026, passed by the Respondent, quash the same to the extent it partially rejects / refuses to allow the Petitioner’s application under Section 128A of the CGST Act, 2017 in full, and consequently direct the Respondents to allow the entire application filed by the

Petitioner under Section 128A by granting waiver of interest and penalty for both Tamil Nadu and Maharashtra components.

For Petitioner(s): M/s.Shiva Kumar.G
B. Revathi

For Respondent(s): Mr. K.S. Ramasamy, Senior Standing Counsel

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ORDER

An order in original under Section 73 of applicable GST enactments was issued on 21.03.2023 both in respect of the petitioner's operations in Tamil Nadu and the State of Maharashtra. As regards the operations in Maharashtra, the petitioner lodged an appeal before the Commissioner Appeals, Mumbai and such appeal was rejected on 31.01.2024 on the ground that the appellate authority has no jurisdiction and that the petitioner has to approach the authority in Chennai. In these circumstances, the petitioner lodged an application for waiver under Section 128A by filing an application in Form GST SPL-02. Said application was allowed partly in respect of the Chennai operations, but rejected in respect of the Maharashtra operations. To the extent of rejection, the petitioner has filed the present writ petition.

2. Learned counsel for the petitioner submits that the application for waiver was presented before the proper officer who issued the order under Section 73 and that the requirements for waiver under Section 128A are satisfied. He also submits that there is nothing in Section 128A or in Rule 164 which denuded such officer of the authority to consider the waiver application.

3. Mr.K.S.Ramasamy, learned senior standing counsel, accepts notice for the respondent. In response, he relies on Circular No.238/32/2024-GST of the CBIC (Circular No.238) to contend that said circular provides that the proper officer to consider an application filed in Form GST SPL-02 is the proper officer for recovery under Section 79.

4. The petitioner's waiver application falls within the scope of Section 128A(1)(b). The record shows that tax liability was discharged prior to the notified date of 31.03.2025. Upon being presented originally on 26.06.2025, which is within the due date for filing such application, the application was processed and waiver was granted only in respect of the operations in Tamil Nadu.

5. On perusal of the impugned order, it is evident that the ground for rejection is that the proper officer is not competent to waive interest and penalty in respect of operations in Maharashtra. In this regard, relying on Circular

No.238, learned senior standing counsel contended that the proper officer in relation to an application in Form GST SPL-02 is the proper officer referred to in Section 79. To this extent, he is correct. Both Explanation (b) to Rule 164 and Circular No.238 support this contention. This, however, leads to the question as to who is the proper officer for purposes of Section 79.

6. Neither Section 79 nor the rules framed thereunder (Chapter XVIII) specify the basis to identify the proper officer. Both Sections 79 and Section 128A, nonetheless, use the expression ‘the proper officer’, thereby indicating that it is a specific person. Significantly, Rule 164 envisages a single application in Form GST SPL-01 or SPL-02, and not multiple applications. Section 79 also provides for availing of the services of a specified officer for recovery. Considering all these aspects, having issued the combined order under Section 73 in respect of both Chennai and Maharashtra locations, there is no statutory basis for the proper officer to decline to exercise jurisdiction in respect of waiver with regard to Maharashtra. Therefore, the impugned order is partly set aside only insofar as the rejection of the waiver claim pertaining to Maharashtra is concerned and the matter is remanded for re-consideration. After providing a reasonable opportunity to the petitioner, a fresh order shall be issued on the waiver application insofar as Maharashtra is concerned.

7. The writ petition is disposed of on the above terms. Consequently, connected writ miscellaneous petitions are closed. There shall be no order as to costs.

31-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
RNA

To

The Assistant Commissioner CGST and Central Excise
Egmore Division,
No.2054, I Block, II Avenue 12th Main Road,
Anna Nagar, Chennai TamilNadu-600 040.

SENTHILKUMAR RAMAMOORTHY, J.

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