IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-08-2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

WP No. 31773 of 2026
and WMP.Nos.34932 & 34933 of 2026

Tvl Karthikeya Authentic Andhra Restaurant
Rep. by its authorised representative
9, MGR Salai, Perungudi
Chennai 600 096
GSTIN 33AATFK9052D1Z6

..Petitioner

Vs

1. Assistant Commissioner (ST)
   Sholinganallur Assessment Circle,
   2nd Floor, Room No.218
   The Integrated Building for Commercial taxes
   and Registration Department (South Tower)
   Nandanam, Chennai-600 035.

2. The Bank Manager, Axis bank
   Secunderabad Branch,
   D.No.5-3-338/3, LPF House Rashtrapati Road,
   Hyderabad, Telangana.

3. The Bank Manager, Central Bank of India
   Nidamanoor Branch,
   At Post Nidamanoor, Sagar Road,
   Nalgonda, Telangana.

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 1st Respondent passed in Impugned order u/s 73 in GSTIN: 33AATFK9052D1Z6/ 2019-20 dated 30.08.2024 culminating into rectification order in GSTIN : 33AATFK9052D1Z6 / 2019-20 dated 19.03.2025 and quash the same and direct the 1st respondent to treat payment of Rs.4,61,032/- on

19.10.2024 accompanied by affirmation by reply dated 25.10.2024 consenting for availing amnesty scheme u/s 128A in par with the Forms to be filed for availment of the amnesty scheme and direct the 1st Respondent to accept the manual filing of SPL-02 on the ground of substantial compliance under Section 128A(1) for being eligible for availing the amnesty scheme under Section 128A and further direct the 1st respondent to lift the bank attachment in DRC-13 dated 10.03.2026.

For Petitioner:	Ms. G Vardini Karthik
For R1:	Mr.I.Dinesh Additional Government Pleader (Tax)

ORDER

An order dated 30.08.2024 and order rejecting the rectification petition are challenged in this writ petition.

2. Learned counsel for the petitioner submits that the petitioner discharged the tax demand under the impugned order on 19.10.2024, which is prior to the notified due date under Section 128A. She also submits that the petitioner had referred to the amnesty scheme in course of rectification proceedings. According to learned counsel, this tantamounts to substantial compliance with the requirements of Section 128A.

3. Relying on the judgment of the Supreme Court in *Government of Kerala v. Mother Superior Adoration Convent, (2021) 126 taxmann.com 68*

(SC), learned counsel submits that the Supreme Court noticed that the judgment in *Commissioner of Customs, v. Dilip Kumar & Co., (2018) 9 SCC 1* did not take note of the line of authorities that had drawn a distinction between exemption provisions, in general, and exemption provisions which have a beneficial purpose. Adverting to the language of sub-section (1) of Section 128A, learned counsel submits that the conditions prescribed in Rule 164 are intended to be directory and not mandatory and that this is reflected in the fact that the phrase "subject to such conditions as may be prescribed" is separated from the rest of the sub-section by a comma. In support of this contention, the judgment of the Supreme Court in *Sama Alana Abdulla v. State of Gujarat, (1996) 1 SCC 427*, particularly paragraph 7 thereof is relied on.

4. Without prejudice to the above contentions, learned counsel submits that the petitioner be given another opportunity in view of the fact that the original order was issued *ex parte* and the entire tax demand was discharged.

5. Mr. I. Dinesh, learned Additional Government Pleader (Tax), accepts notice on behalf of the first respondent.

6. Section 128A(1) sets out the three circumstances in which an application for waiver may be filed. Thereafter, it is stipulated therein that if the full amount of tax payable as per clauses (a) to (c) are paid before the date

notified, no interest under Section 50 or penalty under applicable GST statutes shall be payable and that proceedings shall be concluded subject to such conditions as may be prescribed. The phrase "subject to such conditions as may be prescribed" is intended to be qualificatory and, therefore, such phrase is separated by a comma. Merely on the basis that the qualificatory phrase is separated from the rest of the sub-section by a comma, it cannot be concluded that the prescribed conditions are directory and not mandatory. In order to decide whether the prescribed requirements are directory or mandatory, it became necessary to engage with the prescribed requirements. Such conditions are prescribed in Rule 164. In a batch of cases, Incompressible Fluid Control System v. The Assistant Commissioner, 2026 : MHC : 3296, after examining Rule 164, I concluded that the amnesty scheme is time bound with provision for deemed approval and that the time limits either run from the date of filing of the application for waiver or are closely linked thereto. On that basis, I concluded that the time limit for lodging an amnesty application is an essential requirement. In that context, the judgment of the Supreme Court in *Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and others, (2011) 1 SCC 236,* with regard to the distinction between essential and procedural requirements was relied on.

7. Considering the aforesaid, I am unable to accept the contention that the condition prescribed in Rule 164(6) is directory and not mandatory.

Nonetheless, it is noticeable that the tax demand under the *ex parte* original order was fully discharged. Considering this aspect, revenue interest stands protected and the interest of justice warrants another opportunity to the petitioner. Towards that end, the impugned original order is set aside and the matter is remanded to the first respondent for re-consideration. After providing a reasonable opportunity to the petitioner, a fresh order shall be issued within five months from the date of receipt of a copy of this order.

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

19-08-2026

Index : Yes/No

Neutral Citation : Yes/No

KJ

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