

APHC010395742024



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

[3529]

TUESDAY, THE 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: 20570/2024**

**Between:**

1.PUSHPITH STEELS PRIVATE LIMITED, 303,310/1,303/4 303/B,  
MERLAPAKA VILLAGE, IRLAPADU MANDAL, CHITTOOR DISTRICT,  
ANDHRA PRADESH, 517619 REP. BY ITS MANAGING DIRECTOR  
NAVRATAN GOUR

**...PETITIONER**

**AND**

1.UNION OF INDIA, MINISTRY OF FINANCE THROUGH ITS  
SECRETARY, 4TH FLOOR, A-WING, SHASTRI BHAWAN, NEW  
DELHI 110001.

2.STATE OF ANDHRA PRADESH, REP BY ITS PRINCIPAL  
SECRETARY, REVENUE (CT) DEPARTMENT, VELAGAPUDI,  
AMARAVATI, GUNTUR DISTRICT, ANDHRA PRADESH. '

3.THE DEPUTY COMMISSIONER OF CENTRAL TAX, CGST DOOR  
NO. 1/ 2553 -1, FLOOR, 1 KR TOWERS, RAJIV MARG ROAD, APHB  
COLONY, KADAPA-2.

4.THE ASSISTANT COMMISSIONER, CENTRAL TAX KADAPA-H, YSR  
KADAPA DISTRICT, 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 issue an appropriate writ, order or direction, more particularly in the nature of Writ of MANDAMUS declaring the action of the 3rd respondent the Deputy Commissioner of Central Tax, COST Kadapa dated 22-12-2023 in levying tax under section 73, penalty and interest under Section 73, 122, (1) (a) read with Section 140 (5) and interest under Section 50 while considering the objections/ written submissions filed by the petitioner and directing the petitioner to pay the amount of tax, penalty and interest under the above provisions and the transitional provision not prescribed under the definitions defined under Section (2) and the order is also barred by limitation if Section 73 has to be applied and being arbitrary, unjust, improper without authority of law and contrary to the provisions GST Act 2017 and violative of principles of natural justice and the judgements of various courts and articles 14, 19 (1)(g), 21, 265, 300-A of the Constitution of India and consequently to set aside the impugned order

**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 to grant stay for all further proceedings pursuant to the impugned order the petitioner would be put to serious loss and hardship

**Counsel for the Petitioner:**

1.M V J K KUMAR

**Counsel for the Respondent(S):**

1.JOSYULA BHASKARA RAO (SR. SC FOR CBIC)

2.

**The Court made the following Order:**

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

Heard Sri M.V.J.K. Kumar, learned counsel for the petitioner and Sri Josyula Bhaskara Rao, learned Standing Counsel appearing for the respondents.

2. The petitioner is a manufacturer of steel and allied products, which was registered under the Central Excise Act, 1944 as well as the Finance Act, 1994. On 01.07.2017, the Goods and Services Tax Act, 2017 (GST Act) came into force.

3. Prior to the GST Act, both the Central Excise Act as well as the Finance Act provided for the dealers to utilize the tax paid as to set off the tax liability of the persons registered under these Acts. For this purpose, the persons, who were able to obtain such tax credit, were entitled to hold the credit in a CENVAT account and the tax credit available in such accounts were permitted to be used for setting off the tax liabilities of the registered persons.

4. As the GST Act came into force on 01.07.2017, provisions were made for enabling persons who were holding the CENVAT credit or other tax credits, in the respective laws, to transition these credits into the GST Act. The provision for such transition was Section 140 of the GST Act r/w Rule 117 of the GST Rules.

5. The petitioner herein claimed that it was entitled to transition a sum of Rs.20,12,160/-. This transition was permitted. However, the Assistant Commissioner of Central Tax, Tirupati initiated proceedings for recovery of an amount of Rs.10,86,916/- on the ground that the said CENVAT credit would have to be excluded inasmuch as the said credit arose out of transactions prior to 01.07.2017 and Section 140 (5) of the GST Act only permitted the CENVAT credit in relation to transactions which have taken place after 01.07.2017 to migrate or transition to the GST Regime.

6. After notice being given to the petitioner, the said Officer confirmed this view and passed an order, dated 22.12.2023, reversing the said transition of Rs.10,86,916/- and levying tax, penalty and interest, under Section 73 of the GST Act r/w Section 50 of the GST Act.

7. Aggrieved by the said order, the petitioner has approached this Court, by way of the present Writ Petition.

8. The respondent authorities have filed their counter affidavit.

9. The operative part of the impugned order is contained in Paragraph No.16 of the said order, which reads as follows:

*“In the present case, the taxable person have declared in the table 7 (b) Tran-1 declaration that impugned inputs and input services on which credit taken were received on or after the appointed day i.e., 01.07.2017, whereas on verification of the records, it was found that the taxable person has taken the*

*credit in respect of the services received prior to the appointed date. From the foregoing, the Tax payer have contravened the provisions of sub-section (5) of Section 140 of the CGST Act, 2017 by wrongly availing ITC of Rs.10,86,916/- thereby rendered themselves liable to pay the said amount in terms of Section 73 of the CGST Act, 2017. The tax payer are also liable to pay interest on the said wrongly availed ITC of Rs.10,86,916/- in terms of Section 73 read with sub-section (3) of Section 50 of the CGST Act, 2017. The tax payer are also liable to pay penalty in terms of clause (a) of sub-section (2) of Section 122 of the CGST Act, 2017 read with Section 73, ibid.”*

10. In this paragraph, the 1<sup>st</sup> respondent took the view that any transaction which had occurred prior to 01.07.2017 (the appointed date on which the GST Act came into force) and the tax, if any, which was paid on such transaction prior to 01.07.2017 or thereafter could not transition to the GST Regime and claimed that such transition was barred under Section 140 (5). This view is clearly incorrect. Section 140 (1) of the GST Act reads as follows:

**140. Transitional arrangements for input tax credit. –**

(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and in such manner as may be prescribed.

11. This provision specifically states that the CENVAT credit of the eligible dealers available on the day immediate preceding the appointed date could be transitioned to the GST Regime. As there would be a situation where these taxes were not credited by the appointed date, a facility was given to the tax payers to transition even such tax which may be paid after the appointed date. This facility was given by virtue of Section 140 (5), which reads as follows:

*(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, within such time and in such manner as may be prescribed, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.*

12. In that view of the matter, the findings of the 1<sup>st</sup> respondent that Section 140 (5) permitted only transition of tax, which arose subsequent to the appointed date, is clearly incorrect and ignores the mandatory provision of Section 140 (1) of the GST Act.

13. In that view of the matter, the impugned order, dated 22.12.2023, requires to be set aside and is accordingly set aside and the consequential proceedings shall be passed expeditiously.

14. Accordingly, this Writ Petition is allowed. 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:07.04.2026  
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85

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

**WRIT PETITION NO: 20570/2024**

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

**07.04.2026**

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