

APHC010356602024



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

[3529]

FRIDAY, THE TWENTY SIXTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION Nos.18287 & 14905 OF 2024

Between:

1.M/S. NSPIRA MANAGEMENT SERVICES PRIVATE LIMITED,, FIRST LANE, 16/11/667. HARANATHPURAM, NELLORE, ANDHRA PRADESH- 524002 REPRESENTED BY ITS CFO, MR. K.SAMBASHIVA SASTRY, S/O. KVS R KRISHNA SASTRY, AGED ABOUT 57 YEARS, R/O. MADHAPUR, HYDERABAD - 500 081

...PETITIONER

AND

1.ASSISTANT/ DEPUTY COMMISSIONER OF CENTRAL TAX, NELLORE- DIVISION, NELLORE-LLL RANGE, D.NO. 24-7-205/2, PLOT NO. 221, 12TH MAIN ROAD MAGUNTA LAYOUT, NELLORE- 524 003

2.UNION OF INDIA, MINISTRY OF FINANCE, REPRESENTED BY ITS SECRETARY, NORTH BLOCK, NEW DELHI - 110 001

...RESPONDENT(S):

WRIT PETITION No.18287 of 2024

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 a writ, order, or direction more particularly one in the nature of a Writ of Mandamus declaring ZL3705240408854 dated impugned Defect Memo vide ref no. 21.05.2024 issued by the Respondent No. 1 as being void, arbitrary illegal, without jurisdiction, without authority of law and violative of the principles of natural justice apart from being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India, and to consequently set aside the same 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 to grant leave to the respondents to file counter affidavit and pass.

IA NO: 2 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 to grant leave to file rejoinder in Writ Petition No. 18287 of 2024 and pass

Counsel for the Petitioner:

1.PASUPULETI VENKATA PRASAD

Counsel for the Respondent(S):

1.VENNA HEMANTH KUMAR(CENTRAL GOVERNMENT
COUNSEL)

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WRIT PETITION No.14905 of 2024

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, order, or direction more particularly one in the nature of a Writ of Mandamus a) declaring impugned Defect Memo vide ref no. ZM3705240408732 dated 21.05.2024 issued by the Respondent No. 1 as being void, arbitrary, illegal, without jurisdiction, without authority of law and violative of the principles of natural justice apart from being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India, and to consequently set aside the same and pass such

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 to grant leave to the respondents to file counter affidavit and pass

IA NO: 2 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 grant leave to file rejoinder in Writ Petition No. 14905 of 2024 and pass

Counsel for the Petitioner:

1.PASUPULETI VENKATA PRASAD

Counsel for the Respondent(S):

1....

2.VENNA HEMANTH KUMAR(CENTRAL GOVERNMENT
COUNSEL)

HON'BLE SRI JUSTICE RAO RAGHUNANDAN RAO

AND

HON'BLE SRI JUSTICE T.C.D. SEKHAR

WP Nos.18287 & 14905 OF 2024

COMMON ORDER:- (Per Hon'ble Sri Justice T.C.D. Sekhar)

1. Since the issue involved in both the writ petitions is one and the same, they are being disposed of by this common order.

2. The petitioner is a company incorporated under the Companies Act 2013, having registered with the respondent department vide GSTN-37AAECN3984D1ZB. The petitioner *inter alia* engaged in management of educational institutions, educational consultancy besides providing the same, also engaged in providing hostel accommodation services to students of various educational institutions.

3. In the process of its business, the petitioner had taken residential dwellings on rent from the respective landlords so as to provide accommodation to the students. As the landlords had been charged tax on the invoices issued by them, the petitioner has been paying tax on the renting of residential

dwelling services. It is the case of the petitioner that the services received by the petitioner from the landlords fall under Entry No.12 of the Exemption Notification No.12 of 2017 – Central Tax (Rate) dated 28.06.2017 under Heading 9963 or 9972. As already stated the petitioner paid tax to its landlords inasmuch as they had been charging tax on the invoices. In view of the Exemption Notification, the petitioner filed refund application dated 01.05.2024 seeking to refund the tax amount of Rs.11,49,32,214/- for the period July, 2017 to January, 2020. Similarly, for the period February, 2020 to June, 2022, refund application was filed on 29.02.2024. Initially, the respondent authorities issued defect memos informing the petitioner to furnish certain details. Later, by defect memos dated 21.05.2024, it was informed to the petitioner that the refund applications are not fit for processing as the time limit of two (02) years time period for submissions of refund application is already completed. Questioning the said memos, the above writ petitions were filed.

4. The contention of the counsel for the petitioner is that the question of eligibility of refund cannot be decided by issuance of defect memos as the same requires adjudication in accordance with the procedure contemplated under law. It is further

contended that the respondent authorities have to issue show cause notice in Form RFD-08 and allow the petitioner to file reply in Form RFD-09 and to pass a speaking order in Form RFD-06 as per the procedure contemplated under Rule 92 (3) of CGST Rules, 2017. He would further contend that in the absence of following the procedure under the said Rule, the impugned memos under challenge are liable to be interdicted by this Court.

5. A counter affidavit is filed by the respondents contending that as per Circular No.125/44/2019-GST, dated 18.11.2019 issued by CBIC once a deficiency memo has been issued, the refund application would not be further processed. It is further contended that as per Section 54 of CGST Act, 2017, an application claiming refund of any tax and interest has to be made within a period of two (02) years from the relevant date in such form and manner as may be prescribed. He would further contend that as per Notification No.13/2022-Central Taxes, dated 05.07.2022 the period from the 1st day of March, 2020 to 28th February, 2022 is excluded for computation period of limitation for filing refund application under Sections 54 or 55 of the Act. He would further contend that in view of the above application shall be submitted on or before 19.01.2024, but in the instant case the

refund application was initially filed on 01.04.2024, which is beyond due date for filing refund claim and prayed to dismiss the writ petition.

6. On the other hand, the petitioner filed rejoinder *inter alia* contending that the delay caused in filing the application is not deliberate and the same had occurred due to technical and procedural hurdles. It is further stated that since the respondent authorities did not raise the ground of limitation in the first memo, the same ought not to have been raised in the subsequent memos.

7. On over all consideration of the cases on hand, it is not in dispute that the petitioner filed application seeking to refund under Section 54 of the CGST Act. It is the specific case of the petitioner that, though it is not under obligation to pay tax on renting of residential dwelling services as per Entry No.12 of Exemption Notification No.12 by 2017-Central Tax (Rate), dated 28.06.2017, nevertheless it had paid the tax inasmuch as its landlords had been charging tax on the invoices issued. In view thereof, the petitioner filed applications seeking to refund the taxes paid by it. The respondent authorities by impugned

deficiency memos, informed the petitioner that the refund applications are not fit for processing as the stipulated time of two (02) years time period for submission of the said applications is already completed.

8. In this connection it is pertinent to note that as per Entry No.12 of Exemption Notification No.12 by 2017-Central Tax (Rate), dated 28.06.2017, services by way of renting of residential dwellings for use as residents is exempted, nevertheless the petitioner paid taxes inasmuch as invoices raised by the landlords included the GST component. It is needless to point that any collection of tax shall be in accordance with Article 265 of the Constitution of India which postulates that no tax can be collected without authority of law. As already stated in the case on hand though the petitioner is not liable to pay tax, the same was paid as per the invoices raised by the landlords and therefore it had filed application seeking to refund of the same. Further by impugned deficiency memos, the authorities have informed the petitioner that the applications are not fit for processing as the same were filed beyond the two (02) years as per Section 54 of CGST Act, 2017.

9. Further, the Hon'ble Gujarat High Court in the case of **Comsol Energy Private Limited Vs. State of Gujarat**¹ had considered the applicability of period of limitation set out under Section 54 of CGST Act and held as under:-

"7. Section 54 of the CGST Act is applicable only for claiming refund of any tax paid under the provisions of the CGST Act and/or the GGST Act. The amount collected by the Revenue without the authority of law is not considered as tax collected by them and, therefore, Section 54 is not applicable. In such circumstances, Section 17 of the Limitation Act is the appropriate provision for claiming the refund of the amount paid to the Revenue under mistake of law, which is as under:

(1)Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,-

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

*(b) ****

(c) the suit or application is for relief from the consequences of a mistake; or

*(d) ****

8. This Court, in the case of Binani Cement Ltd. V. Union of India, (2013) 288 ELT 193 (Guj), held that where the duty is collected without any authority of law, such collection of duty is considered as collected without authority of law and, therefore, is opposed to Article 265 of the Constitution of India and, thus, unconstitutional. It is held that the assessee is not bound by the limitation prescribed under the special law for claiming the refund of the excess duty or duty collected illegality. The period of limitation prescribed under the Limitation Act would apply. The relevant abstract of the decision at paragraphs nos.23 and 25 are as under:

"XXXXX....."

¹ C/SCA/11905/2020

11. The issue is squarely covered by the decision of this Court in the case of Gokul Agro Resources Ltd. v. Union of India (Special Civil Application No.1758 of 2020, decided on 26.02.2020), wherein this Court directed the respondent to pass an appropriate order in the refund application preferred by the assessee without raising any technical issue, within a period of four weeks. The relevant paragraph of the finding of this Hon'ble Court is as under:

"6 We may only say that since the Notification has been struck down as ultra vires, as a consequence of the same, the writ applicant seeks refund of the amount paid towards the IGST. However, for this purpose, the writ applicant will have to prefer an appropriate application addressed to the competent authority. If any such application is preferred for the refund of the amount, the authority concerned shall immediately look into the same and pass an appropriate order in accordance with law keeping in mind the decision of this Court rendered in the case of Mohit Minearls (supra). The competent authority shall not raise any technical issue with regard to the claim for refund of the IGST amount. Let this exercise be undertaken within a period of four weeks from the date of receipt of the writ of this order."

10. Further, this Court while dealing with the similar issue, allowed Writ Petition No.17220 of 2024 and batch by order dated 14.08.2025 following the above referred Judgment by directing the respondents therein to consider the refund application without going into the question, whether the said application is filed within time or not.

11. In view of the above reasons and following the above Judgment, the deficiency memos under challenge are set aside and the respondents are directed to consider the application of the petitioner for refund of tax without going into the question of

limitation. Further, the respondents are directed to pass appropriate orders on the petitioner's application within a period of four (04) weeks from the date of receipt of copy of the order.

12. Accordingly, the writ petitions are allowed. No order as to costs.

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

JUSTICE RAO RAGHUNANDAN RAO

JUSTICE T.C.D. SEKHAR

26.09.2025
DR

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THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HONOURABLE SRI JUSTICE T.C.D. SEKHAR

WP Nos.18287 & 14905 OF 2024
Date 26.09.2025

DR