

APHC010283152023



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

[3529]

MONDAY, THE NINETEENTH DAY OF JANUARY  
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

**WRIT PETITION NO: 15151/2023**

**Between:**

1. M/S SONA ENTERPRISES,, SOLE PROPRIETORSHIP, HAVING ITS REGISTERED OFFICE AT. D.NO. 21-35-8, THUMMALAPALLIVARI STREET, TOWN KOTHA ROAD, VISHAKAPATNAM-01 REPRESENTED BY ITS SOLE PROPRIETOR.SHAFI MOHMAD

**...PETITIONER**

**AND**

1. ASSISTANT COMMISSIONER OF CENTRAL TAX, CENTRAL CGST DIVISION, 2ND FLOOR, D.NO.45-57-21, NEAR NH-5, NARSIMHANAGAR, AKKAYAPALEM, VISHAKAPATNAM - 530 024

2. SUPERINTENDENT OF CENTRAL TAX, MAHARANIPETA CGST RANGE, 1ST FLOOR, D.NO. 28-14-10, OPP. V MAX THEATRE, SURYABAGH, VISHAKAPATNAM - 530 020

3. THE STATE OF ANDHRA PRADESH, REPRESENTED BY ITS PRINCIPAL FINANCE SECRETARY TO GOVERNMENT(PFS), 2ND BLOCK, 1ST FLOOR, A.P. SECRETARIAT OFFICE, VELGAPUDI

4. UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE,DEPARTMENT OF REVENUE NORTH BLOCK, NEW DELHI - 110001.

**...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 please to issue any appropriate Writ, order or Direction, preferably a writ in the nature of Mandamus, to declare the Notice bearing C.No.V/04/01/2022-Arrears (P.F.-1) dated 18.04.2023 in Form DRC-13 dated 18.04.2023 and Notice dated 11.05.2013 bearing DIN No.20230555YJ000000CAC4 in Form DRC-13 and Letter bearing C.No.V/04/01/2022-Arrears(P.F.-1) dated 11.05.2023 issued by the 1St Respondent under Section 79(1)(c) of the Central Goods and Service Tax Act, 2017 and Andhra Pradesh Goods and Service Tax Act, 2017 and Notice bearing O.C. No.47/2023 dated 02.06.2022 and Notice bearing OC No. 53/2023 issued by 2nd Respondent and Letter bearing C.No V/04/012/2022-Arrears (P.F.1) dated U5.06.2023 issued by 1st Respondent as being arbitrary, illegal, violative of the provisions of CGST Act and APGST Act besides being unconstitutional and to consequently set aside the same and to direct the Respondents to refund the sum of Rs. 14,39,820/- being additional interest along with interest at the rate of 9percent in terms of the proviso to Section 56 of the CGST/APGST Act, 2017 and pass

**IA NO: 1 OF 2023**

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 suspend Notice bearing C.No.V/04/01/2022-Arrears (P.F.-1) dated 18.04.2023 in Form DRC-13 dated 18.04.2023 and Notice dated 11.05.2013 bearing DIN No.20230555YJ000000CAC4 and Letter bearing C.No.V/04/01/2022-Arrears(P.F.-1) dated 11.05.2023 issued by the 1st Respondent under Section 79(1)(c) of the 'Central Goods and Service Tax Act, 2017 and Andhra Pradesh Goods and Service Tax Act, 2017 and'Notice bearing O.C. No.47/2023 dated 02.06.2022 and Notice bearing OC No. 53/2023 issued by 2nd Respondent and Letter bearing C.No V/04/012/2022-Arrears (P.F.1) dated 05.06.2023 issued by 1st Respondent and refund the recovery of Rs. 15,23,804/- and pass

**Counsel for the Petitioner:**

1.JYOTHI RATNA ANUMOLU

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

1.SANTHI CHANDRA (Sr. Standing Counsel for CBIC)

2.GP FOR FINANCE PLANNING

**The Court made the following Order:**

The petitioner is a dealer in iron and steel scrap. As a part of its business, the dealer purchases scrap from Indian Railways. Under the Goods & Services Tax Act, 2017 [for short “the GST Act”], the tax payable on such purchase is to be paid by the petitioner, on a reverse charge mechanism basis. The said payment of tax is to be done, by way of deposit of cash, as the payment of tax, under the reverse charge mechanism, cannot be done by adjusting the tax liability against the input tax credit available in the credit ledger of the petitioner.

2. The petitioner had been filing its returns including GSTR-3B returns for the period July-2017 to March-2021. On 14.03.2022, the 2<sup>nd</sup> respondent issued a notice to the petitioner calling upon the petitioner to pay an amount of Rs.42,82,275/- along with applicable interest through DRC-03 challan. This notice was issued on the ground that it was found, from the GSTR-3B returns of the petitioner, for the above period, that the petitioner had availed input tax credit for an amount of Rs.43,57,395/-, for the period July-2017 to March-2021. It was further observed that the input tax credit utilized for the period April-2019 to March-2021, was Rs.42,82,275/-.

3. The petitioner upon receipt of this notice, had filed a DRC-03 challan, for adjusting the aforesaid amount from the balance available in the cash credit ledger of the petitioner. However, the 1<sup>st</sup> respondent invoking the provisions of Section 79(1)(c) of the GST Act, issued a notice, to the banker of the petitioner, on 18.04.2023, requiring the said banker to pay the said amount

of Rs.42,82,275/- . This notice appears to have been modified, by way of a handwritten note attached to the notice, stating that a sum of amount Rs.31 lakhs approximately had already been paid by the petitioner and only Rs.11,49,041/- is required to be paid by the banker. The petitioner addressed a letter, dated 02.05.2023, to the 2<sup>nd</sup> respondent, informing the 2<sup>nd</sup> respondent that the petitioner had already paid an amount of Rs.45,87,831/- through the DRC-3 forms and requested the 2<sup>nd</sup> respondent to defreeze the account of the petitioner. Thereafter, the 2<sup>nd</sup> respondent again issued another notice under Section 79(1)(c) of the GST Act, calling upon the banker of the petitioner to pay out a further sum of Rs.15,23,804/- as interest, on delayed payment of tax. The 2<sup>nd</sup> respondent also addressed a letter, dated 12.05.2023, to the petitioner, informing the petitioner about the issuance of the above notice, to the banker of the petitioner. The petitioner had thereafter addressed letters, dated 16.05.2023, 24.05.2023 & 30.05.2023, calling upon the 2<sup>nd</sup> respondent to drop further proceedings. However, the 2<sup>nd</sup> respondent by proceedings, dated 02.06.2023 & 05.06.2023 had called upon the petitioner to pay a further sum of Rs.3,41,691/- towards tax, under reverse charge mechanism, and Rs.3,35,816/- towards interest calculated upto 01.06.2023. It is submitted by the petitioner, that in this process, an amount of Rs.15,23,804/- was paid out by the banker of the petitioner to the GST authorities.

4. Aggrieved by the said collection of interest, the petitioner has approached this Court, by way of the present Writ Petition.

5. Smt. Jyothi Ratna Anumolu, the learned counsel appearing for the petitioner has raised various grounds assailing the said action of the 2<sup>nd</sup> respondent. The primary ground, raised by the learned counsel for the petitioner was the contention that the recovery of interest has been done without any adjudication and without any adjudicatory order setting out the manner in which the interest was calculated.

6. Smt. Santhi Chandra, the learned Senior Standing counsel appearing for the respondents would contend that the tax liability is an admitted liability and late payment of the said amounts would automatically attract the provisions of Section 75(12) of the GST Act and consequently, no adjudicatory order was necessary.

7. The scheme of the Act would show that the liability to tax and the period within which such tax has to be paid, has to be declared by the registered person. In the event of any mistake or suppression of such information, the tax authorities are entitled to initiate proceedings by giving notices to the registered person setting out the discrepancies or deficiencies in the reporting of turnovers, the tax payable on such turnovers and the details of payment of such tax. The respondent authorities, after issuing such notices and after giving appropriate opportunity of hearing, as required under the provisions of the GST Act, are thereafter entitled to pass necessary orders quantifying the tax, late fee, penalty and interest payable on such tax. For this purpose, various provisions including Sections 56, 73 & 74 of the GST Act provide ample power to the authorities. It is only after such an adjudicatory

process has been completed that coercive steps under Section 79 of the GST Act can be taken up. In the present case, no such adjudicatory process has been taken up.

8. The defense of the respondents is that Section 75(12) of the GST Act permits recovery even without an adjudicatory order where the liability is an admitted liability. Section 75(12) of the GST Act reads as follows:-

**“Section 75 (12):-** Notwithstanding anything contained in section 73 or section 74 [or section 74A], where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.”

9. This provision clearly states that the said provision would be available when the registered person files a declaration, in one form or the other, required under Section 39 of the GST Act, setting out the liability of the registered person. Thereafter, the authorities can recover the said tax or collect interest at the prescribed rate, from the date when the tax became due till it is paid. However, this provision would be applicable only when there is a clear cut admission, by the registered person, as to his tax liability. In the present case, the contention of the respondents is that the petitioner had misutilized the input tax credit available with the petitioner and had cleared its liability under the reverse charge mechanism by using input tax credit rather than paying the said amounts, by way of cash deposits. The learned Standing Counsel would specifically contend that the petitioner had availed the input tax credit without payment of tax in cash.

10. The contention of the respondents that the provisions of Section 75(12) of the GST Act can be pressed into service would have to be rejected. This is because, the said provision would be available only where the registered person has clearly disclosed a tax liability, in the returns filed under Section 39 of the GST Act, and such tax liability has not been cleared. Wrong usage of input tax credit or otherwise would only entitle the respondent authorities to initiate proceedings under Sections 73 & 74 of the GST Act and the coercive process under Section 75(12) of the GST Act, cannot be used in such situations.

11. For all the aforesaid reasons, this Writ Petition is allowed, setting aside the recovery process, initiated by the respondents, under Section 79(1)(c) of the GST Act, with a further direction to the respondent authorities to refund the interest payments recovered from the banker of the petitioner. However, it shall not preclude the respondents from initiating appropriate action, if it is deemed necessary, in relation to any claim for interest on delayed payments. 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**

**THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

**AND**

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

**WRIT PETITION No.15151 of 2023**

**19-01-2026**

**BSM**