

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2025
(ARISING OUT OF SLP NO(S).16833-16834/2023)

M/S GODWAY FUNICRAFTS

APPELLANT(S)

VERSUS

THE STATE OF ANDHRA PRADESH & ORS.

RESPONDENT(S)

O R D E R

Leave granted.

2. Being aggrieved by the order dated 11.11.2020 passed in W.P.No.10350 of 2020 as well as the order dated 06.05.2022 passed in Review I.A.No.1 of 2021 by the Division Bench of the High Court of Andhra Pradesh at Amaravathi by which the writ petition as well as the review application were dismissed, the appellant-assessee is before this Court.

3. We have heard Sri Veera Raghavan, learned senior counsel for the appellant and Sri Sahil, learned counsel for the respondent(s), at length.

4. We have perused the material on record.

5. Although learned senior counsel for the appellant raised several contentions, we are inclined to accept only one of the said contentions namely, with regard to the grievance of the appellant *vis-a-vis* the order passed in the review application

inasmuch as it was the submission of the appellant before the High Court in the review application that the imposition of 100% penalty was not correct as fraud or wilful concealment was not proved by the department under Section 74 of the Central Goods and Services Tax Act, 2017 (for short, "CGST Act") and correspondingly Section 74 of the State Enactment. It was submitted that the said plea was raised in the memorandum of the writ petition but however was not possibly adumbrated and elaborated during the course of submissions when the writ petition was heard in the first instance. In the circumstances, the appellant had filed the review application on the basis of clause (c) of Order XLVII Rule 1 of the Code of Civil Procedure, 1908; that there were sufficient grounds for review of the impugned order passed in the writ petition and the High Court ought to have considered the said contention raised by the appellant. In the circumstances, it was contended as a last resort that at least the impugned order passed in the review application dated 06.05.2022 be set aside and the review application may be restored on the file of the High Court for being considered afresh.

6. *Per contra*, learned counsel for the respondent(s)-State and other authorities submitted that there is no merit in these appeals; that the High Court has considered the review application in detail and it was noted that there was no such contention raised originally in the writ petition and that such a contention could not have been raised for the first time in a

review application and therefore, the High Court was justified in dismissing the review application. He therefore, submitted that the appeals may be simply dismissed.

7. Having heard learned senior counsel for the appellant and learned counsel for the respondents, we find that in the instant case, having regard to the facts of the case, the contention regarding imposition of 100% penalty may or may not have been raised expressly during the course of arguments in the writ petition. However, interest of justice would be met in the instant case if permission is granted to the appellant herein to raise such a contention in the review application although such a contention was expressly raised in the review application and it was rejected on the ground that it was not raised originally when the writ petition was argued.

8. We find that the appellant, in the facts and circumstances of this case, was entitled to raise the contention regarding the imposition of 100% penalty in the review application as it was a ground raised in the memorandum of writ petition. Therefore, we find that the High Court has to consider the same on merits in the review application.

9. In the circumstances, the order passed in the Review IA No.1 of 2021 dated 06.05.2022 is set aside and the same is restored on the file of the High Court of Andhra Pradesh at Amaravati.

10. We request the High Court to permit the appellant herein to take all such pleas with regard to the grievance that 100% penalty could not have been imposed on the appellant. On such a plea being raised by the appellant, the High Court to consider the same on its merits and in accordance with law and to dispose of the review application accordingly. Further in the event the appellant is unsuccessful in the review application, liberty is reserved to the appellant to approach this Court only on the aspect regarding penalty.

11. Needless to observe that the imposition of interest on the said penalty is also a point which ought to be permitted to be raised by the appellant in the review application.

12. The appeals are allowed in part and to the extent indicated above.

Pending application(s), if any, shall stand disposed of.

....., J
[B. V. NAGARATHNA]

....., J
[K.V. VISWANATHAN]

NEW DELHI
JULY 15, 2025.

ITEM NO.24

COURT NO.5

SECTION XII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S).16833-16834/2023

[ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 11-11-2020 IN WP NO. 10350/2020 06-05-2022 IN R.I.A NO. 1/2021 PASSED BY THE HIGH COURT OF ANDHRA PRADESH AT AMRAVATI]

M/S GODWAY FUNICRAFTS

PETITIONER(S)

VERSUS

THE STATE OF ANDHRA PRADESH & ORS.

RESPONDENT(S)

(FOR ADMISSION AND I.R. AND IA NO.128974/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 15-07-2025 These petitions were called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s): Mr. Ramakrishnan Viraraghavan, Sr. Adv.
Mr. Parmod Kumar Sharma, Adv.
Mr. Mohit D. Ram, AOR
Mr. Prashant Bajaj, Adv.
Ms. Nayan Gupta, Adv.

For Respondent(s): Mr. Sahil Bhalaik, AOR
Mr. Tushar Giri, Adv.
Mr. Siddharth Anil Khanna, Adv.
Mr. Ritik Arora, Adv.
Mr. Shivam Mishra, Adv.
Mr. Gouttam Polanki, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

Appeals are allowed in part in terms of the

signed order which is placed on file.

Pending application(s), if any, shall stand disposed of.

(B. LAKSHMI MANIKYA VALLI)
COURT MASTER (SH)

(DIVYA BABBAR)
COURT MASTER (NSH)

