



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

[3541]

**WEDNESDAY, THE TWENTY THIRD DAY OF JULY
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

WRIT PETITION Nos: 14494 & 14496 of 2024

WRIT PETITION NO: 14494/2024

Between:

1.M/S. MAHAVIR AUTO DIAGNOSTICS PRIVATE LIMITED,, 38-22-158,
C-20, INDUSTRIAL ESTATE, MARRIPALEM, VISAKHAPATNAM,
ANDHRA PRADESH- 530007 REPRESENTED BY ITS MANAGING
DIRECTOR, MR. PAROVA KUMAR JHABAKH, S/O. VIMAL CHAND
JHABAKH, AGED ABOUT 57 YEARS R/O. 8-2-293/82/A/357, PLOT
NO. 357, ROAD NO. 23/A, JUBILEE HILLS, HYDERABAD
TELANGANA- 500033

...PETITIONER

AND

- 1.ADDITIONAL COMMISSIONER OF CENTRAL TAX, (GST- APPEALS)
D. NO. 3-30-15, RING ROAD, GUNTUR- 522006
- 2.SUPERINTENDENT OF CENTRAL TAX, MARRIPALEM CGST
RANGE, D. NO. 45-57-21, 2ND FLOOR, SRIYA COMPLEX, NEAR
NARASIMHA NAGAR RYTHU BAZAAR, KAILASAPURAM, NH-5,
VISAKHAPATNAM- 530024
- 3.ASSISTANT COMMISSIONER OF CENTRAL TAX, VISAKHAPATNAM
CGST DIVISION, D.NO. 45-57-21, 2ND FLOOR, SRIYA COMPLEX,
NEAR NARASIMHANAGAR RYTHU BAZAR, KAILASAPURAM, NH-5,
VISAKHAPATNAM- 530024
- 4.CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS GST
POLICY WING, , NEW DELHI REP BY ITS COMMISSIONER
- 5.UNION OF INDIA, MINISTRY OF FINANCE, REPRESENTED BY ITS

SECRETARY, 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 issue a writ, order, or direction more particularly one in the nature of a Writ of Mandamus a) declaring impugned Order in Appeal No. VIZ-GST-OOO-APP-053-23-24 dated 30.11.2023 passed by the Respondent No. 1 under the provisions of CGST Act, 2017 as being void, arbitrary, illegal, without jurisdiction, 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 further or other order(s) as this Honble Court may deem fit and proper in the circumstances of the case, b) declaring that the Circular No. 180/12/2022-GST dated 09.09.2022 issued by Respondent No. 4 restricting the aggrieved assesses to file revise forms where adjudication/appeal proceedings is pending is without authority of law and ultra vires to Section 140 of GST Act, 2017 and Honble Supreme Court order in the case of Union of India vs. M/s. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, order dated 22.07.2022 and 02.09.2022 reported vide 2022 (63) GSTL 162 (SC) and 2022 (64) GSTL 385 (SC) besides being violative of articles 14, 19(1)(g) 21, 141 and 265 of the Constitution of India and/or pass

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 may be pleased to stay operation of Order in Appeal No. VIZ-GST-OOO-APP-053-23-24 dated 30.11.2023 passed by the Respondent No. 1 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 may be pleased to grant leave for filing rejoinder in the Writ Petition No. 14494 of 2024 and pass

Counsel for the Petitioner:

1. PASUPULETI VENKATA PRASAD

Counsel for the Respondent(S):

1. P S P SURESH KUMAR

WRIT PETITION NO: 14496/2024

Between:

1. MAHAVIR AUTO DIAGNOSTICS PRIVATE LIMITED, 38-22-158, C-20, INDUSTRIAL ESTATE, MARRIPALEM, VISAKHAPATNAM, ANDHRA PRADESH- 530007 REPRESENTED BY ITS MANAGING DIRECTOR, MR. PAROVA KUMAR JHABAKH, S/O. VIMAL CHAND JHABAKH, AGED ABOUT 57 YEARS R/O. 8-2-293/82/A/357, PLOT NO. 357, ROAD NO. 23/A, JUBILEE HILLS, HYDERABAD, TELANGANA-500033

...PETITIONER

AND

1. ASSISTANT COMMISSIONER OF CENTRAL TAX, VISAKHAPATNAM CGST DIVISION, D.NO. 45-57-21, 2ND FLOOR, SRIYA COMPLEX, NEAR NARASIMHANAGAR RYTHU BAZAR, KAILASAPURAM, NH-5, VISAKHAPATNAM- 530024
2. ASSISTANT COMMISSIONER OF CENTRAL TAX, VISAKHAPATNAM GST AUDIT CIRCLE, GST BHAVAN PORT AREA, VISAKHAPATNAM- 530035
3. SUPERINTENDENT OF CENTRAL TAX, MARRIPALEM CGST RANGE, D. NO. 45-57-21, 2ND FLOOR, SRIYA COMPLEX, NEAR NARASIMHA NAGAR RYTHU BAZAAR, KAILASAPURAM, NH-5, VISAKHAPATNAM- 530024
4. ADDITIONAL COMMISSIONER OF CENTRAL TAX, (GST- APPEALS), D. NO. 3-30-15, RING ROAD, GUNTUR- 522006
5. CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, GST POLICY WING, NEW DELHI REP BY ITS COMMISSIONER
6. UNION OF INDIA, MINISTRY OF FINANCE, REPRESENTED BY ITS SECRETARY, 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 issue a writ, order, or direction more particularly one in the nature of a Writ of Mandamus A. declaring impugned Order-in-Original vide ref. no. 11/2023-24 GST-AC (SS)-2-23-24 dated 25.09.2023 passed by

the Respondent No. 1 and consequent Arrears Notice dated 12.06.2024 issued by Respondent No. 3 under the provisions of CGST Act, 2017 as being void, arbitrary, illegal, without jurisdiction, 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 further or other order(s) as this Honble Court may deem fit and proper in the circumstances of the case. declaring that the Circular No.180/12/2022-GST dated 09.09.2022 issued by Respondent No. 5 restricting the aggrieved assesses to file revise forms where adjudication/appeal proceedings is pending is without authority of law and ultra vires to Section 140 of GST Act, 2017 and Honble Supreme Court order in the case of Union of India vs. M/s. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, order dated 22.07.2022 AND 02.09.2022 reported vide 2022 (63) GSTL 162 (SC) and 2022 (64) GSTL 385 (SC) besides being violative of articles 14,19(1)(g) 21, 141 and 265 of the Constitution of India and/or pas

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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 stay operation of impugned Order-in- Original vide ref. no. vide ref. no. 11/2023-24 GST-AC (SS)-2-23-24 dated 25.09.2023 passed by the Respondent No. 1 and consequent Arrears Notice dated 12.06.2024 issued by Respondent No. 3 and pass

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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 for filing rejoinder in the Writ Petition No. 14496 of 2024 and pass

Counsel for the Petitioner:

1.PASUPULETI VENKATA PRASAD

Counsel for the Respondent(S):

1.P S P SURESH KUMAR

The Court made the following common order:

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

As both these Writ Petitions arise out of the orders passed against an unregistered person, they are being disposed of, by way of this common order.

2. The petitioner, who was earlier registered under the Andhra Pradesh Value Added Tax Act, 2005, had migrated to the GST regime with effect from 01.07.2017. The petitioner, as on the appointed date, i.e., 01.07.2017, had paid excise duty on the stock available with him and sought transition of this excise duty to the GST regime.

3. Under the transitory provisions of Section 143, any registered person, who sought transition of any credit available to him under the relevant tax laws, was required to file Tran-1 Form and Tran-3 Form for obtaining transition of the said credit to the GST regime. It appears that the petitioner had filed Tran-1 Form but has not uploaded the Tran-3 Form. On account of this inability to upload Tran-3 Form, the 3rd respondent issued a show-cause notice, dated 14.01.2020, contending that there was irregular transitional credit and the same needs to be reversed with interest and penalty. The petitioner replied to this show-cause notice, on 28.07.2022, contending that the Tran-3 Form could not be uploaded due to technical glitches and the same cannot be held against the petitioner. However, the 3rd respondent passed an

order, dated 10.02.2023, reversing the transitional credit which had been availed by the petitioner.

4. While matters stood thus, various other registered persons, who were facing similar difficulties, had been approaching the Courts. These litigations culminated in the order of the Hon'ble Supreme Court in the case of ***Union of India vs. M/s. Filco Trade Centre Pvt. Ltd.***,¹. The Hon'ble Supreme Court, after considering the submissions made by both sides, had issued directions that the portal would be opened again with effect from 01.09.2022 to 31.10.2022, to permit persons, who could not file necessary Forms earlier, to be allowed to file Tran-1 and Tran-2 Forms in this period.

5. The petitioner availed of this opportunity and filed Tran-3 Form on 29.11.2022. This was permissible in as much as the initial order of the Hon'ble Supreme Court, directing reopening of the portal upto 31.10.2022 was extended upto 30.11.2022.

6. The Superintendent of Central Tax, who is arrayed as 3rd respondent in W.P.No.14496 of 2024, had rejected the forms of the petitioner, filed on 29.11.2022, by way of an order, dated 10.02.2023. The 3rd respondent in W.P.No.14496 of 2024, relying upon circular No.180/12/2022-GST, dated 09.09.2022, had held that Tran Forms cannot be accepted where adjudication relating to the eligibility of the transitional credit is before the appropriate

¹ 2022 (63) GSTL 162 (SC)

authority. It may also be noted that the rejection of the transitional credit in the first round was still pending adjudication.

7. Aggrieved by the Order in Original of the Superintendent/3rd respondent in W.P.No.14496 of 2024, the petitioner has approached the Additional Commissioner/4th respondent in W.P.No.14496 of 2024, by way of an appeal. This appeal also came to be dismissed as the Additional Commissioner affirmed the view taken by the Superintendent.

8. Aggrieved by the order of rejection, dated 10.02.2023 and the Order-in-Appeal, dated 30.11.2023, the petitioner has approached this Court, by way of the present Writ Petitions.

9. Heard Sri P. Venkata Prasad, learned counsel for the petitioner and Sri P.S.P. Suresh Kumar, learned counsel for the respondents.

10. There is no dispute that the petitioner would have been entitled to file fresh Tran Forms through the window of 01.09.2022 to 30.11.2022. Infact, the petitioner had availed of such opportunity and filed necessary Tran Forms. However, the respondents took the view that it was not permissible for the petitioner to file such Tran Forms, in view of the circular No.180/12/2022-GST, dated 09.09.2022.

11. The circular sets out the guidelines by which the directions of the Hon'ble Supreme Court in the case of *Union of India vs M/s. Filco Trade Centre Pvt. Ltd* were to be implemented. Guideline No.4.7 reads as follows:

“4.7 It is clarified that those registered persons, who had successfully filed TRAN-1/TRAN-2 earlier, and who do not require to make any revision in the same, are not required to file/revise TRAN-1/TRAN-2 during this period from 01.10.2022 to 30.11.2022. In this context, it may further be noted that in such cases where the credit availed by the registered person on the basis of FORM GST TRAN-1/TRAN-2 filed earlier, has either wholly or partly been rejected by the proper officer, the appropriate remedy in such cases is to prefer an appeal against the said order or to pursue alternative remedies available as per law. Where the adjudication/appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/appeal. In such cases, filing a fresh declaration in FORM GST TRAN-1/TRAN-2, pursuant to the special dispensation being provided vide this circular, is not the appropriate course of action.”

12. This guideline stipulates that where Tran Forms filed by the persons is subjected to adjudication on the question of whether they were entitled to avail of such credit, such persons were not entitled to file fresh Tran Forms and they were required to get such adjudication done and in the event of adverse orders, to file appeals against such adjudication orders.

13. In the present case, the view of the respondents was that since the Tran Forms, filed by the petitioner, had been subjected to adjudication, which had not yet been concluded by the time the window period had ended, the petitioner would not be entitled to file any fresh Tran Forms.

14. This view of the respondents does not appear to be correct. Guideline No.4.7, set out above, relates to a situation where the eligibility of a person to avail of credit itself is in question, i.e., where there is any dispute as to whether the credit sought to be transitioned to the GST regime was itself available or not. In the present case, there is no dispute, even according to the impugned orders, that the credit sought to be transitioned by the petitioner was available under the Excise Act. The only issue which was subjected to adjudication in the first round was the question of whether credit could be transitioned without filing of Tran-3 Form. This adjudication is not covered in guideline No.4.7.

15. In the circumstances, the Order-in-Original, dated 25.09.2023, passed by the Assistant Commissioner, which is the impugned order in W.P.No.14496 of 2024, and the Order-in-Appeal, bearing No.VIZ-GST-000-APP-053-23-24, dated 30.11.2023, passed by the 1st respondent in W.P.No.14494 of 2024 are set aside and the respondents are directed to allow the petitioner to avail of the credit available under the Excise Act, by permitting the transition of the credit to the GST regime.

16. In the circumstances, demands if any raised, on account of rejection of the transition credit, shall stand quashed. There shall be no order as to costs.

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

R RAGHUNANDAN RAO, J

SUMATHI JAGADAM, J

Date: 23.07.2025

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THE HON'BLE SRI JUSTICE R RAGHUNANDAN RAO

AND

THE HON'BLE SMT JUSTICE SUMATHI JAGADAM

WRIT PETITION Nos: 14494 & 14496 of 2024

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

23.07.2025

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