



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 21<sup>ST</sup> DAY OF JANUARY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV**

**WRIT PETITION NO. 39323 OF 2025 (T-RES)**

**BETWEEN:**

DIVYASREE TARBUS BUILDERS PRIVATE LIMITED  
COMPANY REGISTERED UNDER  
COMPANIES ACT, 1956  
8TH FLOOR, NO. 11, DIVYASREE CHAMBERS,  
O SHAUGNESSY ROAD, LONGFORD TOWN,  
BENGALURU URBAN, KARNATAKA-560025.

BY ITS AUTHORISED SIGNATORY,  
KUSUMA MALIGAPPA,  
D/O H MALIGAPPA,  
AGED ABOUT 45 YEARS,  
OFFICE AT:  
8TH FLOOR, NO. 11, DIVYASREE CHAMBERS,  
O SHAUGNESSY ROAD, LONGFORD TOWN,  
BENGALURU URBAN, KARNATAKA-560025.

...PETITIONER

(BY SRI. P B HARISH., ADVOCATE)

**AND:**

1. DEPUTY COMMISSIONER  
OF COMMERCIAL TAXES (AUDIT-4.1)  
DGSTO-4, BMTC DEPOT, TTMC BUILDING,  
NEAR SONY SIGNAL, KORAMANGALA,  
BENGALURU-560095.
2. JOINT COMMISSIONER OF COMMERCIAL TAXES  
DGSTO-4, BMTC DEPOT,  
TTMC BUILDING, NEAR SONY SIGNAL,  
KORAMANGALA, BENGALURU-560095.





3. COMMISSIONER OF COMMERCIAL TAXES  
KALIDASA MARG, GANDHI NAGAR,  
VANIJYA THERIGE KARYALAYA,  
BENGALURU-560009.

...RESPONDENTS

(BY SMT. JYOTHI M MARADI, HCGP)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTION OF APPROPRIATE NATURE DIRECTING RESPONDENT NO.1 TO SANCTION REFUND AS SOUGHT BY THE PETITIONER VIDE LETTER DATED 13.11.2025 (ANNEXURE-J) ALONG WITH CONSEQUENTIAL INTEREST AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

**ORAL ORDER**

Petitioner has sought for issuance of writ of mandamus to direct respondent no. 1 to sanction refund as sought by the petitioner as per the letter dated 13.11.2025 at Annexure-J.

2. It is submitted that the order of the appellate authority was sought to be challenged under Section 112 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') and in light of non-constitution of the Tribunal



and in terms of the Circular No.224/18/2024-GST, the question of recovery ought not to have been resorted to. It is submitted that in terms of para 6 of the circular, once there is a declaration to file appeal, recovery proceedings ought not to be initiated. It is submitted that in the present case without reference to the benefit granted under para 6 of the Circular, amount due pursuant to the summary of demand as per Annexure-C has been recovered in its entirety. Accordingly, petitioner has sought for refund.

3. Learned High Court Government Pleader would vehemently submit that the petitioner has not made request to the proper officer as per the circular. Further, it is submitted that the assessing officer has rightly recovered the amount. It is also submitted that the question of payment of interest would not arise as the assessee has not complied with Para No.6 of the Circular. Learned HCGP would further point out that even otherwise, question of extending benefit in terms of para 6



would be subject to payment of amount of pre-deposit as contemplated under Section 112 of the CGST Act.

4. Para 6 of the circular reads as follows:

*"In case, the taxpayer does not make the payment of the amount equal to amount of pre-deposit or does not provide the undertaking / declaration to the proper officer, then it will be presumed that taxpayer is not willing to file appeal against the order of the appellate authority and in such cases, recovery proceedings can be initiated as per the provisions of law. Similarly, when the Tribunal comes into operation, if the taxpayer does not file appeal within the timelines specified in Section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, the remaining amount of the demand will be recovered as per the provisions of law."*

5. It is to be noticed that Para No.6 of the circular does provide for refund in the event the assessee furnishes an undertaking to file an appeal and upon filing



of such appeal, recovery proceedings are not to be initiated.

6. In light of the submission of the petitioner that for the present he is willing to forego refund with respect to the pre-deposit amount and would not insist for interest at present, it would be appropriate to direct the revenue to refund the amount recovered pursuant to Annexure C after withholding the pre-deposit amount as contemplated under Section 112 of the CGST Act.

7. Though the petitioner would contend that the tax liability cannot be enforced by way of recovery by virtue of Para No.6 of the Circular, learned HCGP would contend that for the circular to be made applicable, two preconditions that required to be fulfilled are that (i) the taxpayer must make a deposit of an amount of pre-deposit as contemplated under Section 112 of the CGST Act and (ii) must provide an undertaking to the proper officer. It is



only when these two conditions are fulfilled, the condition in para No.6 would come into play.

8. Learned counsel for the petitioner submits that the undertaking has been furnished to the appellate authority and the Court may take a lenient view keeping in view the objective of the circular.

9. Learned HCGP would insist that the declaration unless made to a proper officer, benefit of the circular cannot be extended. However, she submits that in the peculiar facts of the case, the Court may pass an appropriate order taking note of the assertion of the petitioner while clarifying that the order passed in the present case may not be taken to be a position of law as regards interpretation of para No.6 of the circular.

10. Taking note of the submissions made by both sides, it is not in dispute that the petitioner has furnished an intimation to the appellate authority as per Annexure-D within a period of 7 days from the communication of



summary of demand at Annexure-C. Insofar as the question of pre-deposit, though certain contentions have been raised, petitioner submits that keeping open the legal question of requirement of pre-deposit, in the present case he would concede for the amount of pre-deposit to be retained with the revenue and would accept an order whereby the remaining amount is refunded.

11. Taking note of the facts as well as the contents of Annexure-D, it would be appropriate to dispose of the writ petition by treating the intimation at Annexure-D to be sufficient for the purpose of para No.6 in the peculiar facts of the present case.

12. Accordingly, the respondent - Authorities are directed to refund the amount recovered pursuant to summary of demand at Annexure-C after withholding the pre-deposit amount as contemplated under Section 112 of the CGST Act. It is clarified that insofar as the amount directed to be refunded, petitioner foregoes the claim of



any interest on the same. Such refund to be made within a period of 4 weeks from the date of receipt of certified copy of this order.

13. The writ petition is accordingly ***allowed***. All legal contentions are kept open.

**Sd/-  
(S SUNIL DUTT YADAV)  
JUDGE**



VP