**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

TUESDAY,THE SIXTH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE APARESH KUMAR SINGH
AND
THE HONOURABLE SRI JUSTICE G.M. MOHIUDDIN**

WRIT PETITION NO: 32866 OF 2025

Between:

M/s. Aarush Enterprises, 3-6-293, Opposite Apollo Hospital, Hyderguda, Hyderabad, Telangana- 500029. Represented by its Proprietor, Sudhir Kistappa Naik, S/o- Kishtappa Naik, Aged about 40 years, R/o 10-3-74/23/1, Teachers Colony, East Marredpally, Secunderabad, Telangana- 500 026

...PETITIONER

AND

1. The Assistant Commissioner of Central Tax, Himayatnagar Division, Hyderabad Commissionerate, H. No. 3-6-436/1 to 438/1, 1st Floor, Naspur House, Hyderabad -500 029
2. The Superintendent of Central Tax, Himayathnagar-II Range, Himayatnagar Division, Hyderabad Commissionerate, H. No. 3-6-436/1 to 438/1, 1st Floor, Naspur House, Hyderabad -500 029
3. The Deputy Commissioner ST, Enforcement Wing, O/o Commercial Tax Department. Nampally, Hyderabad, Telangana
4. Union of India, Ministry of Finance, Represented by its Secretary, North Block, New Delhi-110 001
5. State of Telangana, Through Principal Secretary to Government, Revenue Department (Commercial Tax), Hyderabad, Telangana

...RESPONDENTS

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 that impugned Show Cause Notice No. 10/2025-GST-ADC-AC/DC dated 19-09-2025, along with Form DRC-01 bearing Reference No. ZD3609250295162 issued under Section 73 and Reference No. ZD3609250295419 issued under Section 74 by the Respondent No.1, as violative of Section 6(2)(b) of the CGST/TGST Act, 2017, and consequently void, arbitrary, illegal, without jurisdiction, and violative of the principles of natural justice, apart from being contrary to Articles 14, 19(1)(g), and 265 of the Constitution of India, and to set aside the same

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 stay operation of impugned Show Cause Notice No. 10/2025-GST-ADC-AC/DC dated 19-09-2025, along with Form DRC 01 bearing reference no. ZD3609250295162 u/s 73 and ZD3609250295419 u/s 74 issued by the Respondent No. 1

Counsel for the Petitioner: SRI P. VENKATA PRASAD REP
M/S P. V. PRASAD ASSOCIATES

Counsel for the Respondent Nos. 1&2: SRI D. RAGHAVENDAR RAO,
SENIOR COUNSEL FOR CBIC

Counsel for the Respondent No.3: GP FOR COMMERCIAL TAX

Counsel for the Respondent No.4: SRI B. MUKHERJEE REP
SRI N. BHUJANGA RAO, DY. SOLICITOR GENERAL OF INDIA

The Court made the following: ORDER

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HON'BLE THE CHIEF JUSTICE SRI APARESH KUMAR SINGH

AND

THE HON'BLE SRI JUSTICE G.M.MOHIUDDIN

WRIT PETITION No.32866 of 2025

DATED: 06.01.2026

Between:

M/s. Aarush Enterprises

... Petitioner

AND

The Assistant Commissioner of Central Tax,
Himayatnagar Division, Hyderabad Commissionerate,
H.No.3-6-436/1 to 438/1, 1st Floor,
Naspur House, Hyderabad – 500 029 & 4 others

... Respondent

ORDER:

Heard Mr. P.Venkata Prasad, learned counsel representing M/s. P.V.Prasad Associates appearing for the petitioner, Mr. D.Raghavendar Rao, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs (CBIC), appearing for respondent Nos.1 and 2 and Mr. B.Mukherjee, learned counsel representing Mr. N.Bhujanga Rao, learned Deputy Solicitor General of India appearing for respondent No.4.

2. For easy reference to gather the substratum of the dispute, the order dated 31.10.2025 and the order dated 20.11.2025 are extracted hereunder:

31.10.2025:

"Learned counsel Sri P.Venkata Prasad, representing M/s.P.V.Prasad Associates, appears for the petitioner.

Sri D.Raghavendar Rao, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs, appears for respondents No.1 and 2 through video conferencing.

Learned counsel Sri Angothu Nehru appears for respondent No.4.

The show cause notice dated 19.09.2025 along with Form GST DRC-01 issued under Section 73 and also under Section 74 of the Central Goods and Services Tax Act, 2017/Telangana Goods and Services Tax Act, 2017, for the tax period 2021-2022 is under challenge in this writ petition on the ground that the State Tax authorities have already adjudicated the demand in respect of the same transaction by the order-in-original dated 21.04.2025, against which the appeal is pending.

Learned counsel for the petitioner submits that the impugned show cause notice is in violation of Section 6(2)(b) of the Central Goods and Services Tax Act, 2017.

Learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs appearing for the respondents prays for two weeks time to obtain instructions.

List this case on 20.11.2025.

In the meantime, there shall be interim stay of the impugned show cause notice."

20.11.2025:

"Sri P. Venkata Prasad, learned counsel, representing M/s. P.V. Prasad Associates, appears for the petitioner.

Sri D. Raghavendar Rao, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs, appears for respondent Nos.1 and 2.

The show cause notice dated 19.09.2025 against the petitioner for the financial year 2021-22 is on three counts, which read as under:

> "3. Excess availment of Input Tax Credit (ITC) of Rs.2,28,450/- (IGST: Rs.30,890.-, CGST: Rs.98,780/- & SGST: Rs.98,780/-) in

GSTR-3B in comparison with ITC available in GSTR-2A, (GSTR 3B vs 2A)."

"4. The taxpayer has claimed ITC of Rs.96,08,924/- (CGST: Rs.48,04,462/- & SGST: Rs.48,04,462/-) in respect of supplies received from taxpayer whose registration has been cancelled suo-moto retrospectively."

"5. Irregular availment of Blocked/ineligible credit of Rs.19,573/- (IGST: Rs.2,285/-, CGST: 8,644/- & SGST: Rs.8,644/-) during the period 2021-22 for contravention of provisions of Section 17(5) of the CGST Act, 2017."

The show cause notice issued by the State tax authorities is under Section 122 of the Telangana State Goods and Services Tax Act, 2017 (for short, "the TGST Act") in respect of the financial year 2021-22 alleging that the petitioner has issued fake invoices without any underlying supply of the goods, which is liable for penalty under Section 121(1) to an amount equivalent to the Input Tax Credit (ITC) passed on to an amount under Central Goods and Services Tax Act, 2017 (for short, "the CGST Act")/TGST Act. The proceedings by the State tax authorities has ended in imposition of penalty by order dated 21.04.2025. The proceedings by the Central Goods and Services Tax (CGST) have not been concluded. The petitioner has preferred an appeal against the order-in-original passed by the State tax authorities and approached this Court alleging that the impugned show cause notice issued by the Central tax authorities is violative of Section 16(2)(b) of the CGST Act.

Learned counsel for the petitioner has drawn the attention of this Court to show cause notice that the question of fake invoices without underlying supply are also the subject matter of the show cause notice. The proceedings by the State tax authority for issuance of fake invoices without underlying supply and unavailing ITC are also those which could be under scrutiny in the proceedings by the CGST authorities, which is not proper on the part of the CGST authorities in view of Section 16(2)(b) of the CGST Act.

Learned counsel for the respondent submits that the subject matter of both the proceedings do not overlap. Separate proceedings for penalty under Section 122 and irregular and illegal availment of ITC under Section 74(1) of the CGST Act can be initiated by the State and Central tax authorities.

On consideration of the rival submissions of the parties and in the aforesaid facts and circumstances, we are of the view that since the penalty

> proceedings have concluded and the petitioner has preferred an appeal and whereas the proceedings before the CGST authorities are yet to be concluded, the show cause notice dated 19.09.2025 issued by respondent No.1 be kept in abeyance till the appeal preferred by the petitioner is decided. The appellate authority of the State tax department shall conclude the appeal proceedings in accordance with law within a period of four weeks from the date of receipt of a copy of this order. Petitioner shall cooperate in the proceedings.
>
> Let this order be communicated through respondent No.5 to the concerned appellate authority i.e., Appellate Joint Commissioner (ST), Secunderabad Division, Hyderabad.
>
> Let the matter be listed on 30.12.2025."

3. Today when the matter has been taken up, learned counsel for the petitioner informs that the Appellate Authority of the State Tax has not concluded the appeal proceedings against the penalty imposed under Section 121(1) of the Central Goods and Services Tax Act, 2017/Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST/TGST Act'). The officer has changed and therefore, proceedings may not have been disposed by now.

4. On the part of the Central Tax Authorities, learned Senior Standing Counsel for CBIC submits that for the time being, the interest of the petitioner has already been protected by keeping the show cause notice issued by the Central Tax Authorities in abeyance. The Appellate Authority of the State Tax has also been directed to conclude the appeal proceedings initiated under Section 122 of the CGST/TGST Act. He submits that with the aforesaid protection, the matter may be disposed of at this stage with liberty to the Central

Tax Authorities to pass an order on the show cause notice dated 19.09.2025 after consideration of petitioner's reply, but only after the Appellate Authority of the State Tax concludes the appeal proceedings in respect of the show cause notice under Section 122 of the CGST/TGST Act.

5. Learned counsel for the petitioner has made strenuous efforts to convince us that since a question of overlap of proceedings, be it under Section 73 or 74 of the CGST/TGST and Section 122 of the CGST/TGST Act, is involved, the matter may be decided by this Court itself.

6. However, at this stage, we refrain from expressing any final opinion in the matter. Taking into account the submission of the parties, this Court had kept the show cause notice dated 19.09.2025 issued by Central Tax Authorities in abeyance while directing the Appellate Authority of the State Tax to conclude the appeal proceedings, in accordance with law, within a period of four weeks from the date of receipt of copy of the order, which, however, has not yet been concluded.

7. We are of the view that the Central Tax Authorities should proceed with the show cause notice dated 19.09.2025 but only after conclusion of the appeal proceedings pending before the Appellate Authority of the State Tax. Meanwhile, Petitioner may file reply after disposal of the appeal and take all available points in law and fact including the question of overlap and reference

to CBIC circular dated 06.07.2022 in its reply before the Central Tax Authorities. Needless to say, the Central Tax Authorities would take into consideration the grounds urged on behalf of the petitioner and also the findings of the Appellate Authority of the State Tax in the appeal proceedings while taking a decision in the matter. Needless to say, if the petitioner is aggrieved by the order of the Central Tax Authorities or the Appellate Authority of the State Tax, it would be open for it to assail it in an appropriate proceeding on all grounds of law and fact available to it. The Appellate Authority of the State Tax is directed to conclude the proceedings, if not yet concluded within a further period of three weeks from today.

8. The instant Writ Petition is, accordingly, disposed of. However, there shall be no order as to costs.

9. Let the order be communicated to the Appellate Authority of the State Tax by the petitioner.

Miscellaneous applications pending, if any, shall stand closed.

SD/-AHMED ABDULLAH KHAN
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Assistant Commissioner of Central Tax, Himayatnagar Division, Hyderabad Commissionerate, H. No. 3-6-436/1 to 438/1, 1st Floor, Naspur House, Hyderabad -500 029
2. The Superintendent of Central Tax, Himayathnagar-II Range, Himayatnagar Division, Hyderabad Commissionerate, H. No. 3-6-436/1 to 438/1, 1st Floor, Naspur House, Hyderabad -500 029
3. The Deputy Commissioner ST, Enforcement Wing, O/o Commercial Tax Department. Nampally, Hyderabad, Telangana
4. The Secretary, Union of India, Ministry of Finance, North Block, New Delhi-110 001

5. The Principal Secretary to Government, Revenue Department (Commercial Tax), Hyderabad, Telangana
6. Two CCs to GP FOR COMMERCIAL TAX, High Court for the State of Telangana, at Hyderabad [OUT]
7. One CC to M/S. P V PRASAD ASSOCIATES, Advocate [OPUC]
8. One CC to SRI. D. RAGHAVENAR RAO, (senior standing counsel for CBIC) [OPUC]
9. One CC to SRI. N. BHUJANGA RAO, DY. SOLICITOR GENERAL OF INDIA [OPUC]
10. Two CD Copies

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HIGH COURT

DATED:06/01/2026

ORDER

WP.No.32866 of 2025

HIGH COURT FOR THE STATE OF TELANGANA
03 FEB 2026
★ DESPATCHED ★

DISPOSING OF THE WRIT PETITION
WITHOUT COSTS

13

NIT

22/1/26