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

TUESDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

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

<u>WRIT PETITION NO: 3747 OF 2026</u>

Between:

M/s. Andromeda Sales and Distribution Private Limited, Represented by its Authorized Signatory Mr. Nagaraju Paka, S/o: Paka Sidhaiah, aged 37 Years Occ. Senior Vice President Registered office at H.No. 6-3-347/22/8, Ground Floor, Plot No. 201, Dwarkapuri Colony, Punjagutta, Hyderabad - 500028

...PETITIONER

AND

1. Union of India, Represented by Secretary, Ministry of Finance, New Delhi
2. The Principal Commissioner of Central Tax (GST), Hyderabad, GST Commissionerate-500029
3. The Assistant Commissioner of Central Tax (GST), Himayatnagar Division, Hyderabad-500029
4. The Superintendent of Central Tax (GST), Panjagutta -I Range, Hyderabad-500034

...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 any writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the Show Cause Notice dated 19-07-2023, Order in Original No.13/2023-24-GST dated 29-01-2024 and Summary of the Order in the Form GST DRC-07 dated 13-03-2024 issued by Respondent 3 and all consequential recovery proceedings initiated by Respondent 4 as arbitrary, illegal and in effective, as the same have been issued against a non-existent entity whose GST registration stood cancelled.

IA NO: 1 OF 2026

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 the proceedings under Order in Original No.13/2023-24-GST dated 29-01-2024 along with Summary of the Order in Form GST DRC-07 dated 13-03-2024 issued by the Respondent No. 3 and consequential recovery proceedings initiated by Respondent 4 as arbitrary, illegal and in effective pending disposal of the above writ petition.

Counsel for the Petitioner: SRI VIJAYA KUMAR P.B. REPRESENTS SMT. A. V. S. LAXMI

Counsel for the Respondent No.1: SRI B. MUKHERJEE,APPEARS FOR SRI N. BHUJANGA RAO Deputy Solicitor General of India

Counsel for the Respondent Nos.2 to 4: SRI D. RAGHAVENDAR RAO, SC FOR CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

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. 3747 of 2026

DATED : 10.02.2026

Between:

M/s. Andromeda Sales and Distribution Private Limited

... Petitioner

AND

Union of India, represented by Secretary, Ministry of Finance, New Delhi and three others

... Respondents

ORDER:

Dr. Vijaya Kumar P.B., learned Senior Counsel represents Smt. A.V.S. Laxmi, learned counsel for petitioner.

Sri B. Mukherjee, learned counsel appears for Sri N. Bhujanga Rao, learned Deputy Solicitor General of India, for respondent No.1.

Sri D. Raghavendar Rao, learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs appears for respondent Nos.2 to 4.

2. The ground on which challenge to the impugned show cause notice dated 19.07.2023; Order-In-Original dated 29.01.2024 and Summary of the order in FORM GST DRC-07 dated 13.03.2024 is that after amalgamation of the petitioner company pursuant to the sanction granted by the learned National Company Law Tribunal on 04.01.2021, the erstwhile company changed its name to M/s.Andromeda Sales and Distribution Private Limited i.e., the petitioner company and obtained a fresh Certificate of Incorporation on 07.04.2021 and also new GSTIN Registration bearing No.36AAECC0028R1Z1. The impugned proceedings relate to the Financial Year 2017-18 against the erstwhile GSTIN Registration Number, before the merger of the erstwhile company into the petitioner company. The impugned show cause notice and the Order-In-Original are therefore nullity as against the petitioner company. Therefore, the petitioner company has preferred the present Writ Petition on 05.02.2026.

3. The learned counsel for the petitioner company submits that the petitioner company was unaware of the show cause

notice and the proceedings. Therefore, the delay in approaching the writ Court occurred.

4. The learned counsel for respondent Nos.2 to 4 submits that the plea relating to the amalgamation of the petitioner company and initiation of the proceedings for the Financial Year 2017-18 on the erstwhile company are all matters relating to the facts on appreciation of which, appropriate orders can be passed by the appellate authority before whom the petitioner company should have approached. It is submitted that if this Court directs the petitioner company to approach the appellate authority within a strict time frame with pre-deposit, the appellate authority would consider the question of delay sympathetically taking into account the circumstance that the proceedings are allegedly against the erstwhile company having a cancelled GSTIN Registration.

5. The learned Senior Counsel for the petitioner company has placed reliance on the decision of the Apex Court in **Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki**

(India) Limited[1] in relation to the proceedings for reopening of assessment against a non-existing entity which stood amalgamated in another. However, it is also to be taken note of that the said case had gone to the Apex Court after the learned Delhi High Court had upheld the decision of the Income Tax Appellate Tribunal whereby the assessment made in the name of Suzuki Powertrain India Limited for Assessment Year 2012-13 was held to be nullity since the company had amalgamated with Maruti Suzuki (India) Limited under an approved scheme of amalgamation. Therefore, it is apparent that in the case of Maruti Suzuki (India) Limited also, the parties had availed the statutory forum questioning the assessment proceedings against a non-existing or entity which stood amalgamated in another.

6. Reference has also been made to the judgment of High Court of Delhi (D.B.) in **HCL Infosystems Ltd v. Commissioner of State Tax and another**[2], wherein the matter was taken to the writ Court against the impugned show cause notice and Order-In-Original also.

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[1] (2020) 18 SCC 331
[2] 2024 LawSuit (Del) 6006

7. From the averments made in the writ petition, it appears that petitioner changed its name from CASA Capital Management Private Limited incorporated in 2010, to its present name in 2014. It operated as a direct sale agency and earned commission income by way of loan processing/referral fees. It was associated with various financial institutions. One Geosansar Advisors Private Limited (GAPL) incorporated in 2008 in the business of providing comprehensive financial inclusion, literacy and education services acquired majority shareholding of M/s.Andromeda Sales and Distribution Private Limited in 2014 (ASDPL) from its erstwhile shareholders and proposed to consolidate businesses by amalgamation as a single entity later on. The Scheme of Amalgamation was approved by National Company Law Tribunal (NCLT) vide order dated 04.01.2021. The petitioner amalgamated with its holding company. The amalgamated company changed its name from GAPL to ASDPL, i.e., petitioner company. It also obtained a Certificate of Incorporation dated 07.04.2021 and New GST registration with effect from 02.07.2021. Pursuant to the same,

its old GST registration was cancelled with effect from 07.02.2023.

8. A perusal of the show cause notice shows that the petitioner was found to have claimed an irregular input tax credit for the period July, 2017 to March, 2018, which was pointed out by the Range Officer vide ASMT-10, dated 13.06.2022 in contravention of Section 16(2) read with Section 41 of the CGST/TSGST Act, 2017 and Section 20 of the IGST Act, 2017. The assessee did not furnish valid reasons or documentary evidence in support of the defence. Therefore, the petitioner was directed to show cause as to why they should not demand the tax, interest and penalty. The petitioner was directed to produce all the evidence upon which they need to rely in support of the defence and also indicate in the written reply whether they need personal hearing before the case is adjudicated. If the petitioner failed to mention in the written reply, it would be presumed that they do not desire a personal hearing.

9. A perusal of the impugned order-in-original shows that the petitioner in his reply to the intimation in ASMT-10 had vide ASMT-11 dated 28.06.2022 and 16.03.2023 submitted that they have reported ITC credit amounting to Rs.2,24,72,608/- in GSTR 3B returns, whereas in GSTR 2A it was Rs.2,03,57,416/-. Hence, there was a difference of ITC Rs.21,15,192/- in comparison to GSTR 2A. They have provided the list of those supplies of which ITC is not reflecting in GSTR 2A in annexure to their letter. The petitioner also submitted that they had taken ITC based on the valid invoices under Section 16(2) of the CGST Act, 2017 and provided copies of those invoices. They had paid the tax charged in respective invoices to the suppliers of services and/or goods. Hence, they were eligible to take ITC on such invoices which were available with them. The proper officer recorded that the tax payer had failed to submit the reasons for non-compliance of Section 16(2)(c) of the CGST Act, 2017 and from the difference between GSTR 3B and GSTR 2A, it was evident that the tax has not been paid by the supplier. Hence, its contention that they have not availed any ineligible

excess ITC is not tenable. The petitioner was given an opportunity to provide documentary evidence in terms of Circular dated 27.12.2022 vide range office letter dated 18.01.2023, 25.01.2023 and 07.02.2023 but the taxpayer had not submitted any document/reply in that regard. It further appears that no reply to the show cause notice was filed even after lapse of considerable time. Even after opportunities of personal hearing granted to the taxpayer on 16.10.2023, 13.12.2023 and 26.12.2023, they failed to appear before the adjudicating authority. The adjudicating authority, therefore, proceeded to confirm the demand of tax, interest and penalty by the impugned order-in-original dated 29.01.2024.

10. From perusal of the impugned show cause notice and the order-in-original, it appears that even after amalgamation of the petitioner company on 04.01.2021, the petitioner had responded to the intimation under ASMT-10 vide ASMT-11, dated 28.06.2022 and 16.03.2023 stating that they had taken ITC based on valid invoices under Section 16(2)(c) of the CGST Act, 2017 and provided copies of those invoices in the annexure to the

reply. They had taken a plea that they are eligible to take ITC in lieu of the tax charged in respective invoices to the suppliers which were available with them. The petitioner had not taken a plea that the petitioner had taken a new Certificate of Incorporation on 07.04.2021 in the name of M/s.Andromeda Sales and Distribution Private Limited pursuant to the amalgamation of the company as per the sanction granted by the learned NCLT on 04.01.2021. They also did not point out that they had taken a new GST registration. Petitioner did not respond to the show cause notice, neither participated in personal hearing.

11. At this stage in the writ proceedings, the petitioner has taken such a plea. The instant issue therefore involves questions of fact in the light of the plea of amalgamation raised by the petitioner for the first time before the writ court. We therefore consider it proper to relegate the petitioner to avail appellate remedy in respect of its grievances. If such an appeal is filed within a period of two (2) weeks with statutory deposit and a delay condonation application, the appellate authority would

consider the question of delay sympathetically taking into account the facts and circumstances taken on behalf of the petitioner. If he is satisfied with the explanation, then, he would proceed to decide the matter on merits in accordance with law. Let it be made clear that we have not made any comment on the merits of the case of the parties.

Accordingly, the instant Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous applications, if any pending, shall stand closed.

SD/-C.DEEPIKA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary, Union of India, Ministry of Finance, New Delhi
2. The Principal Commissioner of Central Tax (GST), Hyderabad, GST Commissionerate-500029
3. The Assistant Commissioner of Central Tax (GST), Himayatnagar Division, Hyderabad-500029
4. The Superintendent of Central Tax (GST), Panjagutta -I Range, Hyderabad-500034
5. One CC to Smt. A. V. S. Laxmi, Advocate [OPUC]
6. One CC to Sri N. Bhujanga Rao, Deputy Solicitor General of India [OPUC]
7. One CC to Sri D. Raghavendar Rao, SC for Central Board of Indirect Taxes and Customs[OPUC]
8. Two CD Copies

TJ

HIGH COURT

DATED:10/02/2026

ORDER

WP.No.3747 of 2026

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

DISPOSING OF THE WRIT PETITION

WITHOUT COSTS

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tcps
18/2/26