

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

**TUESDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX**

PRESENT

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

WRIT PETITION NO: 1498 OF 2026

Between:

**M/s Goldstone Infra, Having its office at Flat No.102 Goldstone Jewel Park,
Sy.No.246/P Puppalaguda, Manikonda, Hyderabad Rangareddy District,
Telangana - 500089 Rep. by its Managing Partner**

...PETITIONER

AND

- 1. The Additional Commissioner, Customs & Central Tax, Ranga Reddy CGST Commissionerate, Hyderabad O/o. Principal Commissioner of Central Tax Ranga Reddy GST Commissionerate, GST Bhavan H.No.1-98/7/43, VIP Hills, Jaihind Enclave, Madhapur, Hyderabad - 500081**
- 2. Union of India, Ministry of Finance, Represented by its Secretary, North Block, New Delhi-110001**

...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 the Show cause notice dated 21-3-2025 in OR no.16/2024 and consequent Order-in-Original dated 13.10.2025 vide Order no.72/2025-26-Adjn (ADC)-GST passed by Respondent No.1 compositely for the Financial Years 2018 -19 to 2023-24 u/s.74(1) of the Central Goods and Service Tax Act, 2017 (GST Act) as being arbitrary, illegal, violative of principles of natural justice and without authority of law apart from being violative of Articles 14, 19(1)(g) and 265 of the Constitution of India and violative of Rule 142 (1A) of GST Rules and to consequently set aside the same and all consequential proceedings.

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 stay all further proceedings including the recovery of tax demand, interest and penalty pursuant to Order-in-Original dated 13.10.2025 vide Order no.72/2025-26-Adjn (ADC)-GST passed by Respondent No.1 for the Financial Years 2018-19 to 2023-24.

Counsel for the Petitioner: SRI C.V NARASIMHAM

Counsel for the Respondent No.1: SRI DOMINIC FERNANDES, SC FOR CBIC

**Counsel for the Respondent No.2: SRI N.BHUVANGA RAO, DEPUTY
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.1498 of 2026

Dated:27.01.2026

Between:

M/s. Goldstone Infra, Having its office at Flat No.102,
Goldstone Jewel Park, Sy.No.246/P, Puppalaguda,
Manikonda, Hyderabad, Ranga Reddy District,
Telangana – 500 089, Rep. by its Managing Partner.

...Petitioner

and

The Additional Commissioner, Customs & Central Tax,
Ranga Reddy CGST Commissionerate, Hyderabad,
O/o. Principal Commissioner of Central Tax, Ranga Reddy GST
Commissionerate, GST Bhavan, H.No.1-98/7/43, VIP Hills,
Jaihind Enclave, Madhapur, Hyderabad – 500 081,
and another.

...Respondents

ORDER: (Aparesh Kumar Singh, CJ)

Learned counsel Sri C.V.Narasimham appears for the petitioner.

Sri Dominic Fernandes, learned Senior Standing Counsel for Central
Board of Indirect Taxes and Customs, appears for respondent No.1.

The writ petition is filed challenging the show cause notice dated
21.03.2025 and the order-in-original, dated 13.10.2025 covering tax periods

2018-19 to 2023-24, mainly on the following grounds: i) that no hearing was granted after the reply was filed by the petitioner which amounts to violation of principles of natural justice; ii) Rule 142(1A) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as, "the Rules") require issuance of mandatory notice in Form GST DRC-01A since the subject period covered pre-amended period of 2018-19 and 2019-20 which was not issued; and iii) a consolidated order for all the tax periods is not permissible. On these grounds, the impugned orders are liable to be set aside.

Learned counsel for the petitioner has referred to the reply to the show cause notice dated 22.09.2025 (Annexure P-4 at page No.127) and submitted that the petitioner has opted for personal hearing, but after the reply was filed no personal hearing was given to the petitioner. He has also referred to the order-in-original dated 13.10.2025 (Annexure P-1) and submitted that after the petitioner submitted a letter dated 10.09.2025, no personal hearing was given to the petitioner.

Show cause notice was issued on 21.03.2025 (Annexure P-2 at page No.78) and the last notice was issued on 10.09.2025, on which day the petitioner also filed the reply wherein it has requested for personal hearing. Thereafter no opportunity was given to the petitioner.

The petitioner took some time to collect the data in order to file the reply. Though no formal extension of time was given to file the reply, the

petitioner requested for a personal hearing vide its reply dated 10.09.2025, which was not considered.

He submits that the respondents have not issued Form GST DRC-01A notice as mandated by 142(1A) of the Rules. He refers to para 14.2 (page No.55) of the order-in-original and submits that the Additional Commissioner had extracted the amended version of the Rule. He did not refer to the pre-amended Rule. That aspect has been specifically addressed by this Court in **M/s. New Morning Star Travels vs. the Deputy Commissioner¹** and held that for the prior period the requirement is mandatory and it cannot be avoided. In support of his contention, he also relied on the decision of a Coordinate Bench of this Court in **M/s.DBL-Deco (JV) vs. Assistant Commissioner (ST)²**.

He has submitted that each assessment year is separate. The law applicable would also be different. Almost all the High Courts have held that consolidated order is not permissible. Reliance is placed on the Division Bench decision of the High Court of Andhra Pradesh at Amaravati in **S.J.Constructions vs. the Assistant Commissioner³**.

Learned Senior Standing Counsel for Central Board of Indirect Taxes and Customs has referred to the list of dates submitted by him and submits that the show cause notice was issued on 21.03.2025. The petitioner was

¹ 2023 (10) TMI 1246 – APHC = 2023 (79) GSTL 430 (AP)

² W.P.No.8160 of 2024, decided on 10.06.2024

³ W.P.No.11028 of 2025 and batch, dated 17.09.2025

required to submit reply within thirty days. He was also provided the opportunity of personal hearing on many occasions i.e., 25.05.2025, 08.07.2025, 10.07.2025, 23.07.2025, 23.07.2025 and 12.08.2025. Only on 10.09.2025 the petitioner filed his reply. As per Section 75(4) and (5) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as, “the Act”), the petitioner was granted opportunity of personal hearing on more than three occasions, but he did not avail the opportunity of personal hearing rather filed the belated reply. The present proceedings is under Section 74 of the Act.

On the issue of composite order, as per him the matter is no longer *res integra*. He has referred to the decision of the High Court of Delhi in **Mathur Polymers vs. Union of India**⁴. He submits that the decision referred to at para 21 i.e., **Ambika Traders v. Additional Commissioner**⁵ was assailed before the Hon’ble Supreme Court, but the challenge was withdrawn. At paras 21 to 24 of **Mathur Polymers** (supra), the High Court of Delhi has observed that in cases involving allegations of fraudulent avilment of ITC, where the transactions are spread across several years, a consolidated notice may in fact be required in order to establish the illegal modality adopted by such businesses and entities. The language of the legislation itself does not prevent issuance of show cause notice or order for multiple years in a consolidated manner. The said decision was carried to the

⁴ [2025] 177 taxmann.com 860 (Delhi)

⁵ [2025] 177 taxmann.com 134 (Delhi)

Hon'ble Supreme Court in S.L.P (C) Diary No.50279/2025 (M/s.Mathur Polymers vs. Union of India) and was dismissed on 07.11.2025. The other similar matters were withdrawn.

He has invited the attention of this Court to Rule 142(1A) and submitted that nowhere in Rule 142(1A) there is any reference to the 'period'. The reference is only to the 'notice'. The word "shall" in the said Rule has been amended as 'may' with effect from 15.10.2020. Admittedly, the show cause notice was issued after that date. The Rule very clearly says 'may' issue a notice. There is no reference to the period therein. Any other interpretation would amount to reading into the provision something that is obviously missing. He submits that there are judgments on both sides on Rule 142(1A). On the face of it, the purpose of the provision is to put the tax payer to notice that if he wants to pay the tax, he can pay the tax before the show cause notice is issued. Read along with Section 74(5) and 74(8) of the Act, he gets a reduction in the penalty; in either event he has to pay the tax. It is not the case of the petitioner that he agreed with the show cause notice and wanted to make the payment. It has filed the reply denying the contents of the show cause notice. There is no prejudice caused to the petitioner. He cannot be allowed to argue that had Form GST DRC-01A notice been issued, the petitioner would have paid the amount within thirty days.

Learned Senior Standing Counsel submits that the order of a Coordinate Bench of this Court in M/s.DBL-Deco (JV) (supra) is a consent

order. He contends that no prejudice is caused to the petitioner by non-issuance of intimation for pre-amended period. He has referred to the decisions of the High Court of Madras in **ABT Limited vs. Additional Commissioner of GST and Central Excise**⁶ (paras 3 and 7), **Vishaka Exports vs. Assistant Commissioner (ST)**⁷ (paras 8 and 9), the decision of the High Court of Gauhati in **Ashika Business (Private) Limited vs. Union of India**⁸ - regarding prejudice test (paras 21, 22, 26 and 30) and the decision of the High Court of Allahabad in **Elesh Agrawal vs. Union of India**⁹ (paras 6 and 9).

He has relied on **Grasim Industries Ltd. vs. Collector of Customs, Bombay**¹⁰ (para 10) on the principles of statutory interpretation. According to him, if no such expression 'period' is used in rule 142(1A), the court should not read such intention into the provision.

He has lastly submitted that all the grounds can be taken by the petitioner before the appellate authority as well.

In the reply submissions, learned counsel for the petitioner so far as the first ground is concerned, has submitted that there is violation of principles of natural justice. The officer should have granted some more

⁶ [2024] 159 taxmann.com 289 (Madras)

⁷ [2023] 96 GST 716 (Madras)

⁸ [2024] 162 taxmann.com 718 (Gauhati)

⁹ [2023] 151 taxmann.com 538 (Allahabad)

¹⁰ (2002) 4 SCC 297

time. The petitioner was not given personal hearing, which has resulted in serious prejudice.

Regarding Rule 142(1A), learned counsel for the petitioner has submitted that the submissions of the learned Senior Standing Counsel are against the decision of this Court in **M/s.DBL-Deco (JV)**, which has addressed the issue. It is binding on the respondent.

So far as the passing of composite order for multiple tax periods is concerned, learned counsel for the petitioner submits that the case of **Mathur Polymers (supra)** is only on the question of ITC, whereas in the case of the petitioner, ITC is one of the issues. There are other issues involved where serious prejudice would be caused if separate show cause notice and proceedings were not initiated for separate years.

We have heard learned counsel for the parties and considered the grounds urged.

The impugned show cause notice dated 21.03.2025 and the Order-in-Original, dated 13.10.2025 have been challenged *inter alia* on the following grounds:

- i) That no personal hearing was granted after the reply filed by the petitioner which amounted to violation of principles of natural justice and the procedure laid down under the CGST Act;

- ii) That a composite order has been passed for the Financial Years 2018-2019 to 2023-2024; and
- iii) No intimation in Form GST DRC-01A was issued for the subject period in violation of Rule 142(1A) of the CGST Rules, 2017.

We propose to deal with each of these grounds hereinafter.

A perusal of the impugned Order-in-Original dated 13.10.2025 shows that show cause notice was issued upon the petitioner on 21.03.2025 (Annexure P2) asking the petitioner to submit reply within thirty days from the date of receipt of notice as to why (i) Rs.1,25,08,575/- being the GST payable on the construction services provided to independent buyers; (ii) Rs.35,74,500/- being the GST payable on the construction services provided to landowners; (iii) Rs.2,80,35,763/- being the ineligible ITC availed should not be demanded from them; apart from (iv) Rs.55,867/- being the ineligible ITC availed from *suo motu* cancelled; (v) Rs.67,884/- being the ineligible ITC availed; (vi) Rs.1,09,47,703/- being the GST payable on the difference of turnover declared in the GST returns and data submitted; and figures reported under the head 'Revenue from operations' in ITRs filed for the period from 2018-19 to 2022-23; (vii) appropriate interest at applicable rate(s) on the amounts mentioned at (i) to (vi) above; (viii) penalty on the amounts demanded at (i) to (vi) above should not be imposed on them under Section 74(1) read with Section 122(2)(b) of the CGST/TGST/IGST Acts,

2017 by reason of fraud, wilful misstatement and suppression of facts to evade tax as detailed supra; and (ix) penalty equal to the amounts demanded at (i) to (vi) above should not be imposed on them under Section 122(1)(axvi) of the CGST/TGST Acts, 2017 and the corresponding section of IGST Act, 2017 for failure to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder.

The petitioner filed its reply on 10.09.2025 (Annexure P.3) much after the expiry of thirty days period. The proper officer fixed several dates for personal hearing on 25.05.2025, 08.07.2025, 10.07.2025, 23.07.2025 and 12.08.2025 vide letters dated 07.05.2025, 25.06.2025, 27.06.2025, 15.07.2025 and 06.08.2025. The petitioner/tax payer did not attend personal hearing to present its defence. Another opportunity of personal hearing was given on 10.09.2025 vide letter dated 02.09.2025. The petitioner did not appear on that date also, but sent e-mail on 11.09.2025. It is, therefore, evident that the contention of the petitioner that no opportunity of personal hearing was granted is not correct.

As per Section 75(4) of the CGST Act, an opportunity of personal hearing is to be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. Sub-section (5) of Section 75 provides that if sufficient cause is shown by the person chargeable with tax, the proper

officer shall grant time to the said person and adjourn the hearing for reasons to be recorded in writing. It is therefore evident that by granting several opportunities of personal hearing after expiry of the period of thirty days of the service of show cause notice, the proper officer duly complied with the requirement of personal hearing. The contention of the petitioner that it should have been granted opportunity of personal hearing after furnishing its reply on 10.09.2025 much after the expiry of thirty days period for filing its reply, and even after several opportunities of personal hearing does not merit acceptance.

The petitioner has assailed the impugned order by asserting that a composite order for all the financial periods could not be passed as each tax period related to a separate cause of action which the assessee was entitled to take defence. Therefore, separate proceedings ought to have been initiated for different tax periods. The petitioner has placed reliance on the decision of the High Court of Andhra Pradesh rendered in W.P.No.11028 of 2025 and batch in the case of **S.J.Constructions** (supra). The expression used in sub-sections (3) and (4) of Section 74 of the CGST Act relating to issuance of notice covering different tax periods has been interpreted by the learned Division Bench of Delhi High Court in together with the definition of 'tax period' under Section 106 of the CGST Act, in contrast with the language used in Section 74(10) of the CGST Act, where the term 'financial year' is used. On the basis of the interpretation of the aforesaid provision, it has been

held that the legislature was conscious of the fact that notice can relate to a period and need not to be for a specific financial year. It has gone on to hold that in cases involving allegations of fraudulent availment of input tax credit (ITC), where the transactions are spread across several years, a consolidated notice may in fact be required to be given in order to establish the illegal modality adopted by such businesses and entities. The language of the legislation, itself, does not prevent issuance of show cause notice or order for multiple years in a consolidated manner. The opinion of the Delhi High Court is extracted hereunder:

21. Heard. This Court has, in the past, considered several orders-in-original involving demands on the ground of allegations of fraudulent availment of ITC and has held that there are several factual issues in such cases, which would need to be looked into, which cannot be adjudicated in a writ petition. In the decision of *Ambika Traders vs. Additional Commissioner* [2025] 177 taxmann.com 134 (Delhi)/W.P.(C) 4853/2025, in the context of issuance of multiple consolidated SCNs and passing of a consolidated order, this Court observed as under:

43. Insofar as the issue of consolidated notice for various financial years is concerned, a perusal of Section 74 of the CGST Act would itself shows that at least insofar as fraudulently availed or utilised ITC is concerned, the language used in Section 74(3) of the CGST Act and Section 74(4) of the CGST Act is “for any period” and “for such periods” respectively. This contemplates that a notice can be issued for a period which could be more than one financial year. Similar is the language even in Section 73 of the CGST Act. The relevant provisions read as under:

“73. Determination of tax pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.-

Xxx

(3) Where a notice has been issued *for any period* under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised *for such periods* other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

Xxx

74. Determination of tax pertaining to the period up to Financial Year 2023-24, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.-

Xxx

(3) Where a notice has been issued *for any period* under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised *for such periods* other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of Section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice."

44. Some of the other provisions of the CGST Act, which are relevant, include Section 2(106) of the CGST Act, which defines "tax period" as under:

2. (106) "tax period" means the period for which the return is required to be furnished.

45. Thus, Sections 74(3), 74(4), 73(3) and 73(4) of the CGST Act use the term "for any period" and "for such periods". This would be in contrast with the language used in Section 73(10) and 74(10) of the CGST Act where the term "financial year" is used. The said provisions read as under:

73 (10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund"

74 (10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the *financial year* to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund"

The Legislature is thus, conscious of the fact that insofar as wrongfully availed ITC is concerned, the notice can

relate to a period and need not to be for a specific financial year.

46. The nature of ITC is such that fraudulent utilization and availment of the same cannot be established on most occasions without connecting transactions over different financial years. The purchase could be shown in one financial year and the supply may be shown in the next financial year. It is only when either are found to be fabricated or the firms are found to be fake that the maze of transactions can be analysed and established as being fraudulent or bogus.

47. A solitary availment or utilization of ITC in one financial year may actually not be capable of by itself establishing the pattern of fraudulent availment or utilization. It is only when the series of transactions are analysed, investigated, and enquired into, and a consistent pattern is established, that the fraudulent availment and utilization of ITC may be revealed. The language in the abovementioned provisions, i.e., the word 'period' or 'periods' as against 'financial year' or 'assessment year' are therefore, significant.

48. The ITC mechanism is one of the salient features of the GST regime which was introduced to encourage genuine businesses. In the words of Shri Pranab Mukherjee, the then Hon'ble President of India, who addressed the Nation at the launch of the GST on 1st July, 2017, ITC was highlighted as one of the core features integral to the framework of the GST regime. The relevant extract of the said speech of the Hon'ble President is set out below:

"I am told that a key feature of the system is that buyers will get credit for tax paid on inputs only when the seller has actually paid taxes to the government. This creates a strong incentive for buyers to deal with honest and compliant sellers who pay their dues promptly."

49. It is seen that the said feature of ITC has been misused by large number of unscrupulous dealers, businesses who have in fact utilized or availed of ITC through non-existent suppliers/purchases, fake firms and non-existent entities. The ultimate beneficiary of the ITC in the most cases may not even be the persons in whose name the GST registration is obtained. Businesses, individuals, and entities have charged commissions for passing on ITC. In several cases, it has also been noticed that the persons in whose name the GST registration stands are in fact domestic helps, drivers, employees, etc., of businessmen who are engaged on salary and who may not even be aware that their identities are being misuses.

In the above decision, the court has fully considered the statutory scheme as also the legislative history of the GST Act and held

that in cases relating to availment of Input Tax Credit, considering the maze of transactions and due to the fact that the transactions may be spread over several years, issuance of a consolidated notice for multiple Financial Years would be permissible and tenable.

22. Thus, this Court is of the opinion that in cases involving allegations of fraudulent availment of ITC, where the transactions are spread across several years, a consolidated notice may in fact be required in such cases in order to establish the illegal modality adopted by such businesses and entities. The language of the legislation, itself, does not prevent issuance of SCN or order for multiple years in a consolidated manner.”

The challenge to the aforesaid judgment by the aggrieved petitioner in S.L.P (Civil) Dairy No.50279 of 2025 was dismissed vide judgment dated 07.11.2025 holding that no good grounds were made out. It is also to be taken note of that as per Section 74(10) of the CGST Act, an order under sub-section (9) has to be passed within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund. As per the CBIC Circular, the last date for passing of order under Section 74 of the CGST Act for the Financial Year 2018-19 was extended upto 31.12.2025. The impugned order has been passed on 13.10.2025 and as such even for the Financial Year 2018-19, the composite order has been passed well within the period of limitation prescribed under Section 74(10) read with Section 74(9) of the Act. The assessee cannot claim to be prejudiced if the adjudication proceedings for multiple years have been concluded before the period of limitation prescribed under Section 74(10) of the CGST Act.

The contention made on behalf of the petitioner that the decision in the case of **Mathur Polymers (supra)** relates to the question of input tax credit only would make no difference so far as the principle of law as regards issuance of show cause notice and passing of adjudication order for multiple years under Section 74 of the CGST Act is concerned.

The petitioner has also raised an issue of non-issuance of notice or intimation in Form GST DRC-01A before issuance of the show cause notice. According to the petitioner, the amendment to Rule 142(1A) of the CGST Rules by substituting the expression 'proper officer shall' with 'proper officer may' was made with effect from 15.10.2020. The show cause notice covered period prior to that. As such, the proper officer was obliged to issue intimation in Form GST DRC-01A. He has referred to the decision of Andhra Pradesh High Court in **M/s.New Morning Star Travels (supra)** in support of the submission that for the period prior to 15.10.2020, requirement of issuance of intimation in Form GST DRC-01A was mandatory and could not have been avoided. He has also referred to the decision in W.P.No.8160 of 2024, dated 10.06.2024, in the case of **M/s.DBL-Deco (JV) (supra)**.

On the other hand, learned counsel for the Revenue has invited the attention of the Court to the language used in Rule 142(1A) of the CGST Rules after amendment with effect from 15.10.2020 and submitted that the Rule does not refer to any period therein, but only communication of details

of any tax, interest and penalty. He submits that on the interpretation of Rule 142(1A) of the CGST Rules, diverse judgments have been rendered. The purpose of provision is to put the tax payer to notice so that he can pay the tax before the show cause notice is issued. He gets a reduction in penalty in the event he pays the tax. It is not the case of the petitioner that it agreed to make the payment.

As per his reply to the show cause notice, the petitioner had contested the grounds on which show cause notice was issued. In this regard, he has referred to the decision of the **ABT Limited** (supra) and **Vishaka Exports** (supra) rendered by the Madras High Court. In both the decisions, which relate to tax period prior to 15.10.2020, it has been held that the amendment is prospective and therefore, apply to the show cause notice. The decision rendered by the Andhra Pradesh High Court in **M/s.New Morning Star Travels** (supra) and that of the Madras High Court in **Vishaka Exports** (supra) on the interpretation of the amended Rule 142(1A) of the CGST Rules are divergent. He has submitted that in the facts and circumstances of the case, the test is whether non-intimation under Rule 142(1A) of the CGST Rules has, in the ultimate analysis, led to any prejudice to the assessee. The petitioner though in its reply to the show cause notice raised the issue of non-intimation of the tax, penalty and interest ascertained by the proper officer under Rule 142(1A) of the CGST Rules, but it, at the same time, contested the charges contained in the show cause notice. Therefore, the requirement

of the intimation was rendered formal. If issuance of such intimation could not have served any benefit to the assessee, it would be futile on the part of the writ court to enforce on the revenue authorities fulfilment of that condition as no real prejudice is shown to have been caused. In **Elesh Agarwal** (supra), the Division Bench of Allahabad High Court had in a similar circumstances held that no real prejudice has been caused to the petitioner for reason of the discrepancy alleged in issuance of show cause notice in Form GST DRC 01A.

Upon consideration of the stand of the parties, the following position emerges on the requirement of issuance of intimation under Rule 142(1A). Rule 142(1A) either before or after amendment did not use the expression 'period'. The legislature consciously amended the expression 'shall' used in unamended Rule 142(1) as 'may'. The Rule does not refer to the 'period' for which the intimation relates.

Though the petitioner has placed reliance on the decision of **M/s.New Morning Star Travels** (supra) as to the requirement of compliance of intimation in Form GST DRC-01A for the tax period prior to the amendment to the Rule with effect from 15.10.2020, but the petitioner has not shown any prejudice caused by its non-compliance. Petitioner, in his reply, has strongly contested the grounds taken in the show cause notice, apart from taking a plea of non-issuance of intimation in Form GST DRC-01A. In the case of **M/s.New Morning Star Travels** (supra), it has been held that in a case

where the interpretation of a statute leads to ambiguity, the benefit ought to go to the tax payer. The decision, however, does not address as to whether non-issuance of such intimation led to any prejudice, in the facts and circumstance of the case. A Constitution Bench of the apex court in **ECIL vs. B.Karunakar**¹¹, at para 30(v), has held that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case.

In **Dharampal Satyapal Limited vs. Deputy Commissioner of Central Excise, Gauhati**¹², rendered in a case relating to New Industrial Policy in the North-Eastern region, the apex court has while dealing with the issue of violation of principles of natural justice held that even if it is found by the court that there is a violation of principles of natural justice, the court may not necessarily strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. The validity of the order has to be decided on the touchstone of '*prejudice*'. The ultimate test is

¹¹ (1993) 4 SCC 727

¹² (2015) 8 SCC 519

always the same viz., the test of prejudice or the test of fair hearing. The opinion of the apex court at para 40 of the said judgment is extracted as under:

“40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of “*prejudice*”. The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.”

The apex court has also referred to the decision of ECIL (supra). It further held that so far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. By referring to the words used in ECIL (supra), at para 31, it was observed therein that since the courts/tribunals will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. Keeping in view the aforesaid principles in mind, the apex court went on to hold that even when the court finds that there is infraction of principles of natural justice, it has to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount

recoverable, only after issuing notice to show cause to the appellant. The apex court found that such an exercise would be totally futile having regard to the law laid down in the case of **R.C.Tobacco (Private) Limited vs. Union of India**¹³.

We find that in the case of **M/s. New Morning Star Travels** (supra), this issue of prejudice test was neither raised nor taken into consideration by the learned court. The case in **M/s.DBL-Deco (JV)** (supra) decided by this court was based upon the consent of the respondent/revenue to set aside the impugned order for not issuing the notice under Rule 142 by reserving liberty to issue such notice.

In the case of **Ashika Business (Private) Limited** (supra), at paras 21, 22 and 26, the Gauhati High Court has also relied on the prejudice test. The Allahabad High Court in **Elesh Agarwal** (supra) has also taken a similar view in a case raising non-issuance of Form GST DRC-01A.

It would be pertinent to refer to the opinion of the apex court on what constitutes a *per incuriam* or *sub silentio* decision rendered in the case of **Bilkis Yakub Rasool vs. Union of India**¹⁴. At para 154, on the rule of *sub silentio* being another exception to the rule of precedents, the opinion of the apex court is as under:

“154. Another exception to the rule of precedents is the rule of *sub silentio*. A decision is passed *sub silentio* when the particular point of law in a decision is not perceived by the court or not present to its mind or is not consciously determined by the

¹³ (2005) 7 SCC 725

¹⁴ (2024) 5 SCC 481

court and it does not form part of the *ratio decidendi* it is not binding vide *Arnit Das (1) vs. State of Bihar*¹⁵.”

It follows therefrom that a decision is passed *sub silentio* when the particular point of law in a decision is not perceived by the court or not present to its mind or is not consciously determined by the court and it does not form part of the *ratio decidendi*, it is not binding. (Also see paras 13, 13.1 to 13.8 of *Odisha State Financial Corporation vs. Vigyan Chemical Industries*¹⁶). In such a situation, the decision in the case of *M/s. New Morning Star Travels* (supra) can be said to be rendered *sub silentio* as the test of prejudice was neither raised nor considered by the learned court. This court is therefore of the opinion that non-issuance of intimation in Form GST DRC-01A under amended Rule 142(1A) for the period prior to 15.10.2020 upon the petitioner did not result in causing any prejudice for the purposes of striking down the impugned order.

The petitioner has an efficacious alternative remedy of appeal to raise all available grounds of law and fact under Section 107(1) of the Act.

If, in the ultimate analysis, the petitioner could not show any prejudice for non-issuance of the intimation in Form GST DRC-01A, this Court could refrain from exercising its discretionary jurisdiction under Article 226 of the Constitution of India as it could only be a formality.

¹⁵ (2000) 5 SCC 488

¹⁶ 2025 SCC OnLine SC 1609

For the aforesaid reasons, this court is of the considered opinion that the petitioner has not been able to make out a case for interference in the impugned show cause notice and the Order-in-Original on any of the grounds raised by it in writ jurisdiction. The petitioner may avail the remedy of statutory appeal taking all such grounds of law as available on facts. Needless to say, in such a case, the appellate authority would consider the explanation of the petitioner for delay, if any, in preferring the appeal taking into account that the petitioner was prosecuting his remedy before this court in the writ jurisdiction.

The writ petition stands dismissed. There shall be no order as to costs.

Miscellaneous applications, if any, shall stand closed.

SD/-M. NAGAMANI
ASSISTANT REGISTRAR

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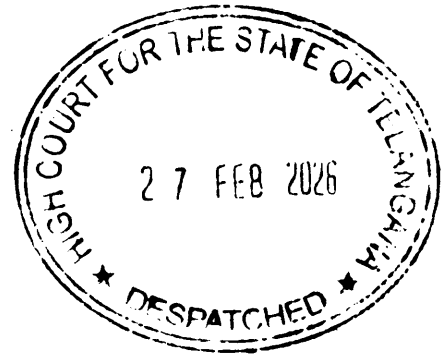
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HIGH COURT

DATED:27/01/2026



ORDER

WP.No.1498 of 2026

**DISMISSING THE WRIT PETITION
WITHOUT COSTS**

(6)

NT

11/2/26.