IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9074 of 2025
and
W.M.P.No.10181 of 2025

Shri.K.R.Kaliyan,
Proprietor of M/s. Kaliyan Contractors,
2/64, Koo Thangal, Ellai Gramam Post,
Ulundurpet Taluk, Villupuram,
Tamil Nadu – 607 202. ... Petitioner

Vs.

1. The Additional Commissioner of Central Tax,
   Newry Towers: No.2054-I,
   II Avenue, Anna Nagar,
   Chennai – 600 040, Tamil Nadu.
2. Commissioner of GST & Central Excise
   (Appeals – II),
   Newry Towers, 2nd Floor, No.2054,
   II Avenue, 12th Main Road, Anna Nagar,
   Chennai – 600 040, Tamil Nadu. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records in the file of the respondents and quash the Impugned Order under Section 74 of the Tamil Nadu Goods and service Tax Act, 2017/Central Goods and Service Tax Act, 2017 including the order dated 28.03.2024 in DIN-20240359XL00009479F5 and consequent Summary of the Order in Form GST DRC-07 dated 15.05.2024 having Reference Number ZD330524108924H and in GSTIN: 33AOUPK0562R2Z8 passed by the First Respondent for FY 2016-2022 along with the acknowledgment in Form GST APL-02 dated 07.02.2025 with order attached thereto in DIN-20250259KU0000111A57 issued by the Second Respondent under Rule 108 of Central Goods and Services Tax Rules, 2017/Tamil Nadu Goods and Services Tax Rules, 2017 for the FY 2016-2022.

For Petitioner : Mr.N.V.Balaji
For Respondents : Mr.Rajendran Raghavan
Senior Standing Counsel

ORDER

In this writ petition, the petitioner has challenged the impugned Order-in-Original No.16/2024-GST (ADC) dated 28.03.2024 and consequent Summary of the Order in Form GST DRC-07 dated 15.05.2024 passed by the first respondent for FY 2016-2022, after the petitioner's appeal against them in Appeal No.177/2024/GSTA-II/COMM/CO dated 08.11.2024 was dismissed by the second respondent vide impugned Order-in-Appeal No.17/2025 dated 07.02.2025.

2. By the impugned order following amount was confirmed:-

(i) I confirm the demand of Rs.2,10,40,508/- (Rupees Two Crores Ten lakhs forty thousand five hundred and eight only) being the CGST amount payable by the taxpayer during the period from July 2017 to March 2022 under the provisions of Sub-section (9) of Section 74 of the CGST Act, 2017

(ii) I confirm the demand of Rs. 2,10,40,508/- (Rupees Two Crores Ten lakhs forry thousand five hundred and eight only) being the SGST amount payable by the taxpayer during the period from July 2017 to March 2022 under the provisions of Sub-section (9) of Section 74 of the TNGST Act, 2017;

(iii) I appropriate Rs.29,14,519/- (Rupees Twenty nine lakhs fourteen thousand five hundred and nineteen only) being the CGST amount already paid by the taxpayer Under DRC-03 as discussed in para 14.10 above, against the amount demanded at clause (i) above;

(iv) I appropriate Rs.29,14,519/- (Rupees Twenty nine lakhs fourteen thousand five hundred and nineteen only) being the SGST amount already paid by them under DRC-03 as discussed in para 14.10 above, against the amount demanded at clause (ii) above;

(v) I confirm the demand of appropriate interest under Section 50(1) of the CGST Act 2017, on the amount confirmed at clause (i) above:

(vi) I confirm the demand of appropriate interest under Section 50(1) of the TNGST Act. 2017 on the amount confirmed at clause (ii) above;

(vii) I impose a penalty of Rs.2,10,40,508/- under Section 74(9) of the CGST Act, 2017 read with, Section 122(2)(b) of the Act ibid, equivalent to amount confirmed at clause (i) above;

(viii) I impose a penalty of Rs.2,10,40,508/- under Section 74(9) of the TNGST Act, 2017 read with Section 122(2)(b) of the Act ibid, equivalent to amount confirmed at clause (iii) above:"

3. Thus, the total tax demand confirmed is Rs.4,20,81,016/- (Rs.2,10,40,508 x 2). Out of the same a sum of Rs.58,29,038/- (Rs.29,141,519 x 2) was paid on 17.05.2022 and 22.12.2022) which have been appropriated towards the tax liability of Rs.4,20,81,016/-.

4. The aforesaid appeal was filed by the petitioner on 08.11.2024. The second respondent / Appellate Commissioner rejected the appeal on two grounds, namely: (i) limitation, and (ii) failure to deposit the mandatory 10% pre-deposit.

5. The learned counsel for the petitioner submits that although the detailed Order-in-Original No.16/2024-GST (ADC) dated 28.03.2024 was communicated to the petitioner earlier, the summary of the impugned order in Form GST DRC - 07 was uploaded only on 15.05.2024.

6. It is further submitted that the appeal was filed on 08.11.2024 within the permissible period, as the extended time for filing an appeal along with an application for condonation of delay was available until 14.11.2024.

7. It is submitted that the petitioner, being a proprietor and a contractor, had undergone treatment for brain disorder in a hospital and therefore could not approach the appellate authority within time. In this connection, in paragraph 7 of the affidavit filed in support of the present writ petition it has been stated as follows:

" The petitioner during the month July' 2024 had undergone medical treatment on account of brain related issues. The petitioner was hospitalized to undergo medical treatment. Subsequently, the petitioner had consequent health constraints. On account of the same, the petitioner filed appeal in Form GST APL 01 with a delay of 85 days."

8. As far as the mandatory pre-deposit of 10% required under Section 107 of the respective GST enactments is concerned, the learned counsel for the petitioner submits that even before the conclusion of the proceedings by the first respondent and the passing the Order-In-Original No.16/2024-GST(ADC) dated 28.03.2024, a sum of Rs.58,29,038/- was recovered from the petitioner. It is submitted that, at best, the petitioner was required to deposit Rs.36,25,198/-, which the petitioner is willing to pre-deposit.

9. It is further submitted that the architecture of the GST portal is inherently gets auto-populated and cannot be edited and therefore adjusted of Rs.58,29,038/- is not permitted. The petitioner disputes that the liability of Rs.58,29,038/- (towards SGST and CGST) out of 4,20,81,016/- and states that the said amount has not been admitted by the petitioner, as evident from Column 14 of the appeal memorandum in Form APL-01 filed under Rule 108 (1) of the respective GST enactments.

10. The learned counsel for the petitioner submits that the petitioner has a fair chance to succeed on merits and therefore prays for quashing of the impugned order. Additionally, the learned counsel submits that the demand confirmed by the first respondent in Order-in-Original No.16/2024 – GST (ADC) dated 28.03.2024 involves bunching of tax periods contrary to the provisions of the respective GST enactments. However, it is submitted that the petitioner would canvass these grounds in detail if this Court is inclined to remit the matter back to the second respondent for fresh consideration on merits.

11. On the other hand, the learned Senior Standing Counsel for the respondents submits that the writ petition is devoid of merits and is liable to be dismissed. It is submitted that the petitioner has to deposit another 10% as pre-deposit in terms of Section 112 of the respective GST enactments, and therefore the petitioner cannot seek interference with the requirement of depositing the additional 10% of the disputed tax.

12. It is further submitted by the learned Senior Standing Counsel that the petitioner has not substantiated the claim of having suffered a "brain disorder warranting surgery", and that considering the delay in filing the appeal, no interference is warranted.

13. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents, and taking note of the fact that the petitioner was suffering from health issues which prevented the petitioner from approaching the second respondent appellate authority in time, Court is inclined to dispose of the writ petition by remitting the case back to the second respondent to pass a fresh order on merits without reference to limitation, subject to the petitioner depositing a sum of Rs.36,25,198 /- within a period of 60 days from the date of receipt of a copy of this order.

14. In case, the petitioner deposits the aforesaid amount within the stipulated time, the appeal dismissed by the second respondent vide impugned Order-in-Appeal No.17/2025 dated 07.02.2025 in Appeal No.177/2024/GSTA-II/COMM/CO shall stand restored, and the second respondent shall thereafter dispose of the appeal on merits and in accordance with law without reference to limitation.

15. This Writ Petition stands disposed of with the above observations. No costs. Connected Writ Miscellaneous Petition is closed.

21.11.2025

Index : Yes/No
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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