IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-04-2025

CORAM

THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 14759 of 2025
AND
WMP NO. 16659 OF 2025,WMP NO. 16657 OF 2025

Commscope India Private Limited,
Formerly Known As Commscope
Solutions India Pvt Lt.,
Rep By Its Authorized Signatory
Mr. Anandu Nayak
No. 28, Level 8 And 9, SIDCO Industrial Estate,
Guindy, Tamil Nadu - 600 032.

Petitioner(s)

Vs

1.Commissioner(Appeals II),
Office Of The Commissioner Of GST And Central Excise
(Appeal-II),
Newry Towers, 2nd Floor No.2054-I,
II Avenue, 12th Main Road,
Anna Nagar, Chennai - 600 040.

2.Commissioner of Central Tax
Office Of The Commissioner Of GST And Central Excise,
Newry Towers, No.2054, I, II Avenue, 12th Main Road,
Anna Nagar, Chennai - 600 040.

3.Additional Commissioner Of Central Tax,
Office Of The Commissioner Of Gst And Central Excise,
Newry Towers, No.2054, I, II Avenue, 12th Main Road,
Anna Nagar, Chennai - 600 040.

Respondent(s)

PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, praying for an issuance of Writ of Certiorarified Mandamus, calling for the records of the Impugned Order-in-Appeal No. 12/2025 dated January 28, 2025 passed by the 1st respondent, and to quash the same, and further, direct the 1st respondent to restore the appeal on records and hear the same on merits after grant of hearing.

For Petitioner(s): Mr.Gopal Mundhra
For M/s.Mallows Priscilla P

For Respondent(s): Mr.Sai Srujan Tayi,
Senior Panel Counsel
And Ms.Pooja Jain,
Jr.Panel Counsel

ORDER

This writ petition has been filed by the petitioner challenging the impugned Order-in-Appeal No.12/2025 dated 28.01.2025 passed by the 1st respondent.

2.Mr.Sai Srujan Tayi, learned Senior Panel Counsel and Ms.Pooja Jain, learned Junior Panel Counsel takes notice on behalf of the respondents.

3.By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4.Learned counsel for the petitioner would submit that the petitioner preferred an appeal on 13.06.2023 against the order-in-original dated 14.03.2023 passed by the 3rd respondent. The 1st respondent accepted the appeal and the personal hearing was also provided to the petitioner on 21.10.2024. Following the personal hearing, the petitioner had also filed their written submissions on 30.10.2024. Thereafter, on 20.01.2025, the 1st respondent issued letter seeking clarification regarding the mandatory pre-deposit. In response, the petitioner filed letter providing clarification regarding mandatory pre-deposit with an undertaking to pay the shortfall in pre-deposit if required by the 1st respondent. However, vide order dated 28.01.2025, the 1st respondent rejected the appeal on account of the short payment of pre-deposit.

5.He would further submit that the petitioner had remitted the shortfall in pre-deposit and prayed to set aside the impugned order directing the 1st respondent to restore the appeal.

6.Learned Senior Panel Counsel appearing for the respondents would submit that he is not sure about the remittance of the shortfall in pre-deposit by the petitioner.

7.Heard the learned counsel for the petitioner as well as the learned Senior Panel Counsel appearing for the respondents and perused the materials available on record.

8.Considering the submissions made by the learned counsel for the petitioner as well as the learned Senior Panel Counsel appearing for the respondents, it is evident that, at the time of filing the appeal, the petitioner had remitted a sum of Rs.1,87,57,727/- on 13.06.2023. Thereafter, the 1st respondent found that there was a shortfall of Rs.34,06,296/- in the 10% pre-deposit made by the petitioner and issued a letter dated 20.01.2025 seeking clarification from the petitioner after a period of 1 ½ years from the date of filing the appeal. The 1st respondent supposed to have scrutinized the amount paid by the petitioner before accepting the appeal. Rejecting the appeal after the filing of the written statement on the ground of short payment is not proper. The petitioner cannot be penalized for the fault committed on the part of the 1st respondent's Department in scrutinizing the pre-deposit. Thus, this Court finds fault on the decision making process of the 1st respondent in rejecting the appeal at this stage on the ground of short payment in the mandatory pre-deposit. Further, the petitioner would submit that they have remitted the shortfall amount vide Form DRC-03 on 09.04.2025. In such circumstances, this Court is inclined to set aside the impugned order. Accordingly, this Court passess the following orders:-

> (i)The order impugned herein is set aside and the respondent is directed to take the appeal on record subject to the verification of the payment made by the petitioner, in respect of the shortfall amount.
>
> (ii)Thereafter, the respondent shall pass appropriate orders on merits and in accordance with

law, after hearing the petitioner, as expeditiously as possible.

9.With the above directions, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

24-04-2025

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

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