IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.32519 of 2025
and
W.M.P.No.36447 of 2025

M/s. Nest Communication,
Rep. by its Proprietor Mr.Nitesh Kumar
No.140, Madhavaram High Road,
Perambur, Chennai – 600011. ... Petitioner

Vs.

The Commercial Tax Officer,
Villivakkam, North-III,
Greams Road, Chennai – 600006. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent pertaining to the Order for Rejection of Application submitted under Section 128A of the CGST Act, 2017 in Form GST SPL-07 dated 05.06.2025 bearing Reference No.ZD330625029853A and quash the same as illegal, arbitrary and in violation of principle of natural justice and further direct the Respondent to consider afresh the petitioner's application under Section 128A and grant waiver of interest and penalty.

For Petitioner : Mr.C.Rekhakumari

For Respondent : Mr.C.Harsha Raj
Special Government Pleader

ORDER

In this Writ Petition, the petitioner has challenged the impugned Order dated 05.06.2025 in Form GST SPL-07 rejecting the application submitted by the petitioner on 20.02.2025 in Form GST SPL – 02 under Section 128A of the respective GST Enactments for waiver of interest and penalty.

2. Operative portion of the impugned Order dated 05.06.2025 is extracted hereunder:-

> *"Based on the verification your application with reference no. ZD330225201469N dated 20/02/2025 filed under Section 128A of the CGST Act, 2017 is hereby rejected."*

Order id/ SCN id	Reason for rejection
ZD330225 201469N	*Other Reason* *- Demand ID not shown against DRC-03 payment.*

3. The specific case of the petitioner is that petitioner had earlier suffered an Order-in-Original No.13/2023-GST dated 31.03.2023 which was preceded by the Show Cause Notice No.2/2022 in Form GST DRC-01 to which the petitioner failed to reply and thus suffered the impugned order.

4. As the demand proposed in the Show Cause Notice in Form GST DRC-01 was confirmed in the aforesaid Order-in-Original No.13/2023-GST dated 31.03.2023 against the petitioner, the petitioner preferred an appeal before the Commissioner of GST and Central Excise (Appeals-I) in Appeal No.122 / 2024.

5. By Order-In-Appeal No.122 / 2024 dated 29.06.2024, the Appellate Commissioner sustained the demand proposed in the Notice and confirmed the aforesaid Order-in-Original No.13/2023-GST dated 31.03.2023. However, while confirming the demand, the Appellate Commissioner has held that the demand was payable in terms of Section 73 of the respective GST Enactments.

6. It is the specific case of the petitioner that at the time of filing the appeal before the Appellate Commissioner, the petitioner had deposited a sum of Rs.2,63,000/- on 19.07.2023. It is submitted that pursuant to the aforesaid

appellate order, the petitioner had also deposited the balance amount of tax of Rs.23,63,960/- on 24.12.2024 in Form DRC – 03.

7. It is also the case of the petitioner that the entire amount of tax liability of Rs.26,26,960/- has been discharged. Pursuant to the same, a fresh order was passed in Form GST DRC-07 on 19.02.2025, wherein, the petitioner was called upon to pay the tax amount alone. On the following day i.e. on 20.02.2025, a Rectification Order was passed in Form GST DRC-08, whereby, penalty was also demanded.

8. It is in this background, the petitioner approached the respondent to seek the benefit of amnesty provisions under Section 128-A of the respective GST enactment by filing Form GST SPL-02 on 21.02.2025 for waiver of interest and penalty.

9. On 26.03.2025, the petitioner was informed that to avail the benefit of waiver scheme of the respective GST enactment, the petitioner was required to upload DRC-03A Form in the GST Portal and that this document was essential for submitting self assessment details of the assessee. However, in the petitioner's application dated 21.02.2025, it was noticed that the petitioner had

failed to upload Form DRC-03A. It was further informed that, the petitioner had also not given any intimation of withdrawal of the appeal.

10. It is in this background, the petitioner has filed a reply on 25.04.2025 in Form GST SPL - 04 wherein, the petitioner has enclosed a document namely a covering letter along with an attachment as Exhibit.

11. In the aforesaid letter, the petitioner has informed the respondent that, the petitioner was facing a technical issue while filing Form DRC-03A on the GST Portal and that the Demand Order dated 19.02.2025 was not appearing, due to which, the petitioner was unable to proceed further with the filing of Form DRC-03A on the GST Portal.

12. It is therefore submitted by the learned counsel for the petitioner that the impugned Order dated 05.06.2025 in Form GST SPL-07 rejecting the application under Section 128A of the respective GST enactments is liable to be quashed.

13. The learned counsel for the petitioner has placed reliance on a Circular issued by the Central Board of Indirect Taxes and Customs on

15.10.2024, wherein it has been stated in Paragraph No.4 as follows:-

S.No.	Issue	Clarification
1.	Whether the benefit provided under Section 128A will be applicable to taxpayers who have paid the tax component in full before the date on which the said section has come into effect?	In the regard, it is to be mentioned that all such amount paid towards the said demand upto the date notified under sub-section (1) of section 128A, irrespective of whether the said payment has been done before Section 128A comes into effect, or after that, and irrespective of whether such payment was made before the issuance of the demand notice or demand order, or after that, shall be considered as paid towards the amount payable in sub-section (1) of Section 128A, as long as the said amount has been paid upto the date notified under sub-section (1) of section 128A and was intended to be paid towards the said demand.

14. On the other hand, the Learned Special Government Pleader for respondent drew the attention of the Court to Section 128A of the respective GST enactment and Rule 164(2) of the CGST Rules. Specifically, reference was made to Section 128A of the respective GST Enactments.

15. Reference was also made to second proviso to Rule 164(2) of the CGST Rules. It is submitted that as per which, if the payment towards such tax

demanded has been made through Form GST DRC-03, an application in Form GST DRC-03A, as prescribed in sub-rule (2B) of Rule 142, it shall be filed by the said person for credit of the said amount in the Electronic Liability Register against the debit entry created for the said demand, before filing the application in Form GST SPL - 02.

16. It is therefore submitted by the Learned Special Government Pleader for respondent that before filing an application in Form GST SPL-02 under Section 128-A, Form GST DRC-03A should have been uploaded by the Petitioner in the GST portal.

17. The learned counsel for the Respondent further submitted that the petitioner failed to comply with the mandatory requirements to claim benefit under amnesty provisions before filing application under Section 128A of the respective GST Enactments.

18. It is therefore submitted by the learned counsel for the Respondent that the petitioner ought to have filed Form DRC-03A to appropriate the amount that was paid through Form DRC - 03.

19. It is further submitted by the learned counsel for the Respondent that without such appropriation, the application filed under Section 128A of the respective GST Enactments would be incomplete and therefore it was rightly rejected. Hence, the respondent submits that the Writ Petition is without any merit.

20. I have considered the submissions made by the learned counsel for the Petitioner and the learned counsel for the Respondent.

21. It is noticed that the petitioner had paid the amount required under Section 128A of the respective GST Enactments. Section 128-A of the respective GST enactment, as in force with effect from 01.11.2024 is reproduced hereunder:-

> ***"128A. Waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods***
>
> *(1) Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with,—*
>
> *(a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of section 73 has been issued; or*
>
> *(b) an order passed under sub-section (9) of section 73, and where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or*

(c) an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,

pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:

***Provided** that where a notice has been issued under sub-section (1) of section 74, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of section 75, the said notice or order shall be considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:*

***Provided** further that the conclusion of the proceedings under this sub-section, in cases where an application is filed under sub-section (3) of section 107 or under sub-section (3) of section 112 or an appeal is filed by an officer of central tax under sub-section (1) of section 117 or under sub-section (1) of section 118 or where any proceedings are initiated under sub-section (1) of section 108, against an order referred to in clause (b) or clause (c) or against the directions of the Appellate Authority or the Appellate Tribunal or the court referred to in the first proviso, shall be subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order:*

***Provided** also that where such interest and penalty has already been paid, no refund of the same shall be available.*

(2) Nothing contained in sub-section (1) shall be applicable in respect of any amount payable by the person on account of erroneous refund.

(3) Nothing contained in sub-section (1) shall be applicable in respect of cases where an appeal or writ petition filed by the said person is pending before Appellate Authority or Appellate Tribunal or a court, as the case may be, and has not been withdrawn by the said person on or before the date notified under sub-section (1).

(4) Notwithstanding anything contained in this Act, where any amount specified under sub-section (1) has been paid and the proceedings are deemed to be concluded under the said sub-section, no appeal under sub-section (1) of section 107 or sub-section (1) of section 112 shall lie against an order referred to in clause (b) or clause (c) of sub-section (1), as the case may be.]"

22. To implement the above scheme under Section 128-A of the respective GST enactment, Rule 142-(2B) has been inserted into the Rules. The aforesaid rule was inserted into the CGST Rules, 2017 by **Notification No.12/2024 - Central Tax** dated **10.07.2024**.

23. The facts of the case reveal that after passing of the Order-in-Original No.13/2023-GST dated 31.03.2023, the petitioner filed an appeal before the Appellate Authority under Section 107 of the respective GST enactment, in Appeal No.122/2024, which came to be partially allowed by Order-in-Appeal No.122/2024 dated 29.06.2024 by modifying the penalty imposed under Section 74 to Section 73, while upholding the demand confirmed in the Order-in-

Original No.13/2023-GST dated 31.03.2023.

24. At the time of filing of the appeal before the Appellate Authority, the petitioner had already pre-deposited 10% of the tax demanded and deposited a sum of Rs.2,63,000/- (being 10% of Rs.23,63,960/- confirmed in the aforesaid Order-in-Original No.13/2023-GST dated 31.03.2023).

25. After the appeal was dismissed in the Order-in-Appeal No.122/2024 on 29.06.2024, the petitioner had also deposited balance tax amount of Rs.23,63,960/- leaving aside the penalty imposed on the petitioner under Section 73 of the respective GST Enactments.

26. In this background, a separate demand was made in Order in Form GST DRC-07 dated 19.02.2025. In the said order, no penalty or interest was demanded from the petitioner notwithstanding the fact that the petitioner had already paid the tax due in two stages i.e. on 19.07.2023 for a sum of Rs.2,63,000/- (being 10% of the disputed tax) and balance sum of Rs.23,63,960/- (being balance amount payable by the petitioner towards tax in view of the order of the Appellate Commissioner in Order-in-Appeal No.122/2024 dated 29.06.2024) on 24.12.2024.

27. In this background, a Rectification Order came to be passed on 20.02.2025 under Section 161 of the respective GST Act, whereby a sum of Rs.1,31,348/- was added towards penalty under CGST and SGST. In the said Rectification Order also, there was no interest demanded from the petitioner under Section 50(1) of the respective GST Enactments.

28. Thus, it is evident that the entire tax liability of Rs.26,26,960/- stood discharged immediately after Section 128-A was inserted with effect from 01.11.2024 by **Notification No.17/2024** dated **27.09.2024**. The aforesaid amount stood paid after insertion of Rule 142-(2B) to the respective GST Rules by **Notification No.12/2024 - Central Tax** dated **10.07.2024.**

29. Admittedly, in this case, the amount has been paid on 19.07.2023 and 24.12.2024. Procedural infraction, if any either in failing to credit the amount directly to the Electronic Liability Register in Form GST PMT-01 as contemplated under Rule 142-(2B) of the respective GST Rules or by filing an application in Form GST DRC-03A as contemplated in Rule 142-[2B] of the respective GST Rules and second proviso to Rule 164(2) of the respective GST Rules is to be held to be only a procedural requirement and not substantial

requirement as long as the amount has been debited towards the tax liability.

30. Procedural irregularity in filing an application in Form GST DRC-03A should not come in the way of legitimate benefit of **Notification No.21/2024-Central Tax** dated **08.10.2024** issued under Section 128-A of the respective GST Enactments.

31. In somewhat of a similar situation, this Court in **W.P.(MD)No.21330 of 2025** dated **10.09.2025** has held as under:-

> *"30. As there is substantial compliance with the scheme under Section 128A of the respective GST enactments read with Notification No.21/2024-Central Tax dated 08.10.2024 and the corresponding Notification issued by the State Government dated 08.10.2024 under Section 128A(1) of the TNGST Act, 2017, the delay in withdrawing the appeal should not be put against the Petitioner. The scheme has to construed liberally keeping the object for which Section 128A was inserted in the respective GST enactments.*
>
> *31. Therefore, the benefit of the aforesaid scheme is to be allowed to the Petitioner as the Petitioner has taken steps to withdraw the appeal in Appeal No.237 of 2023 though under Section 128A(3), the appeal should have been withdrawn on or before the date notified under sub-section 1 of Section 128A of the respective GST enactments i.e., 31.03.2025."*

32. It has been repeatedly held by the Hon'ble Supreme Court that procedures are the handmaidens of justice and not the mistress of law.

33. Accordingly, the substantive benefit under Section 128A of the respective GST Enactments deserves to be allowed. However, the same need to be considered if the payment made through DRC – 03 dated 24.12.2024 has not been appropriated towards the tax liability for any other tax period.

34. Considering the same, this Writ Petition is disposed of by remitting the case back to the respondent to pass fresh orders on merits within a period of 12 months from the date of receipt of a copy of this order. If the amount paid in DRC-03 by the petitioner has not appropriated towards any other tax liability, appropriate orders shall be passed accordingly.

35. This writ petition stands disposed of with the above observation. No costs. Connected Miscellaneous Petitions are closed.

21.11.2025

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Neutral Citation : Yes / No

To

The Commercial Tax Officer,
Villivakkam, North-III,
Greams Road, Chennai – 600006.

C.SARAVANAN, J.

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W.P.No.32519 of 2025

21.11.2025