IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 35458 of 2025
and
W.M.P. No. 39683 of 2025

M/s. RGE Construction and Development Pvt. Ltd.,
Represented by its authorised signatory,
Dharmalingam Vijaya Kumar. ...Petitioner

Versus

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

2.The Additional Commissioner of GST & Central Excise,
Chennai South Commissionerate,
No.692, MHU Complex, Nandanam,
Chennai – 600 035. ...Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari, to call for the records of the 1st respondent in issuing the impugned Order-in-Appeal No.55/2025 dated 12.03.2025 for the period 01.07.2017 to 31.03.2020, rejecting the same for alleged short-payment of pre-deposit as such a rejection is completely arbitrary and unreasonable and in violation of principles of natural justice, thereby directing them to accept the Appeal on record and hear the same on merits.

For Petitioner : Ms. K. Sharanya Vijay
for Mr. K. Vaitheeswaran

For Respondents : Mrs. Revathi Manivanan, SPC

O R D E R

This Writ Petition is disposed of at the time of admission with the consent of the learned counsel for the Petitioner and the learned Government Advocate who takes notice on behalf of the Respondents.

2. In this Writ Petition, the Petitioner has challenged the impugned Order-in-Appeal No. 55/2025 dated 12.03.2025 in A.No.161/2023/GSTA-II/COMM/CS dated 21.07.2023. In the said appeal, the Petitioner had challenged Order-in-Original No.13/2023-GST (ADC) dated 31.03.2023 issued on 24.04.2023.

3. By the aforesaid order, the Additional Commissioner namely, the 2nd Respondent had confirmed the following demands: -

> *"i. I confirm the demand and recovery of ineligible Input Tax Credit of Rs.9,57,31,569/- (Rupees Nine Crore Fifty*

Seven Lakhs Thirty One Thousand Five Hundred and Sixty Nine only) {as mentioned in Para 25.12 above} under Section 73 (9) of the CGST / TNGST Act, 2017 read with Section 20 of the IGST Act 2017;

ii. I order appropriation of the amount of Rs.68,85,766/- (Rupees Sixty Eight Lakhs Eighty Five Thousand Seven Hundred and Sixty Six only) reversed in their ITC vide 4(B)(1) of GSTR 3B during the period July 2017 to March 2020 against the demand at (I) above;

iii. I confirm the demand of interest at the appropriate rate under Section 50(3) of CGST / TNGST Act, 2017 in respect of Para (I) above;

iv. I confirm the demand and recovery of Ineligible Credit of Rs.10,73,59,239/- (Rupees Ten Crore Seventy Three Lakhs Fifty Nine Thousand Two Hundred and Thirty Nine only) {as mentioned in Para 26.8 above} carried forward in their TRAN-1 under Section 73(9) of the CGST Act, 2017;

v. I drop the demand of Interest under Section 50(3) of CGST Act, 2017 in respect of Para (IV) above based on the discussions at para 27.1 to 27.3;

vi. I impose a penalty of Rs.2,03,09,081/-(Rupees Two Crore three Laksh nice thousand and eighty one only) on them under Section 73(9) CGST Act 2017 / Tamil Nadu GST Act 2017."

4. Aggrieved by the same, the Petitioner has filed the above appeal before the 1st Respondent, who as of now rejected the appeal on the ground that the Petitioner has not made mandatory pre-deposit of 10% of the disputed tax.

5. Defending the impugned order, the learned counsel for the Respondents would submit that the Petitioner is required to pay 10% on the disputed amount and the amount that was paid towards the admitted tax liability cannot be reckoned for the purpose of determining 10% of the pre-deposited amount under Section 107 of the respective GST Enactments.

6. On perusal of the Form GST APL-01 of the Petitioner, it is evident that the Petitioner has questioned the entire tax liability of Rs.20,30,90,808/- and the penalty of Rs.2,03,09,081/- imposed by the 2nd Respondent vide aforesaid Order-in-Original No.13/2023-GST (ADC) dated 31.03.2023.

7. The Relevant portion from Form-GST APL-01 against Order-in-Original dated 31.03.2023 is extracted below: -

> *"4. Regarding the payment of remaining amount of pre-deposit, the Appellant have claimed in their Appeal in Form APL-01 as follows:*
>
> *Details of payment of admitted amount and pre-deposit (pre-deposit 10% of the disputed tax and cess): Rs.68,85,766/- has already been paid and same was appropriated in Para 29 of the impugned Order-in-Original. The remaining amount is paid as under:*
>
> *(i) Rs.18,07,571/- has already been paid towards CGST and the remaining amount of Rs.1,27,04,975/- is paid.*

(ii) Rs.18,07,570/- has already been paid towards SGST and the remaining amount of Rs.19,69,052/- is paid.

(iii) Rs.32,70,625/- has already been paid towards IGST which is more than the pre-deposit payment, hence no further payment is required under IGST."

Thus, it is not for the department to conclude that the Petitioner has not disputed the entire tax liability imposed by the 2nd Respondent vide aforesaid Order-in-Original No.13/2023-GST (ADC) dated 31.03.2023 issued on 24.04.2023.

8. Considering the fact that the Petitioner has already deposited a sum of Rs.68,85,766/- prior to passing of the aforesaid Order-in-Original, the amount to be pre-deposited by the Petitioner for the purpose of filing an appeal before the 1st Respondent would be the balance of 10% which is Rs.1,46,74,024/- which was also paid by the Petitioner on 20.07.2023. Therefore, there is no justification in the impugned order rejecting the Petitioner's appeal on the ground that the Petitioner has not pre-deposited mandatory 10% of the disputed tax.

9. Under these circumstances, the impugned order of the 1st Respondent dated 12.03.2025 is set aside and the case is remitted back to the 1st Respondent to pass a fresh order on merits after hearing the Petitioner.

10. Since the dispute pertains for the period between 2017-2018 to 2019-2020, the 1st Respondent shall endeavour to pass a final order on merits as expeditiously as possible.

11. The Writ Petition is disposed of with the above observations. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

19.09.2025

Index : Yes/No
Neutral Citation :Yes/No
AT

To

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C.SARAVANAN, J.

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