IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 38663 and 38667 of 2025
and
W.M.P. Nos. 43240 and 43243 of 2025

M/s. MMS Steels,
Represented by its Proprietor,
Mohamed Ismail ... Petitioner in both WPs

Vs.

1.The Appellate Deputy Commissioner (CT),
Erode.

2.The Assistant Commissioner (ST)(FAC),
Tiruppur Central-II Assessment Circle,
Second Floor, Emperor Building,
No.16, Indira Nagar, 1st Street,
Avinashi Road, Tiruppur – 641 603.

3.The State Tax Officer (FAC),
Tiruppur Central-II Assessment Circle,
Second Floor, Emperor Building,
No.16, Indira Nagar 1st Street,
Avinashi Road, Tiruppur – 641 603. ... Respondents in both WPs

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the first respondent to restore the appeal filed by the petitioner in Reference Nos.ZD330524025495I and ZD330524025257M respectively dated 19.09.2023 for the financial years 2018-19 and 2019-20 respectively and dispose of the same on merits.

For Petitioner (in both Wps)	:	Mr. P.V. Sudakar
For Respondents (in both WPs)	:	Mrs. P. Selvi, Government Advocate

COMMON ORDER

Both these Writ Petitions are being disposed of by way of this common order 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. The Petitioner had unsuccessfully approached the Authority under the notification issued under Section 128A of the respective GST Enactments pursuant to the respective Assessment Orders dated 22.06.2023 passed for the tax period 2018-2019 and 2019-2020.

3. These Assessments Orders were passed under Section 74 of the respective GST Enactments. Earlier, the Petitioner had filed statutory appeal before the Appellate Authority on 19.09.2023 but withdrew the same in view of the applications filed under notification issued under Section 128A of the Income Tax Act on 30.03.2025 and 24.03.2025 for the respective years, which have been rejected by orders dated 12.08.2025 and 02.09.2025 in Form GST SPL-07. Now the Petitioner seeks restoration of the appeals that were withdrawn with a view to settle the dispute under Section 128A read with the relevant notification issued for settling the dispute under the provisions of the aforesaid Section and Notification.

4. The applications were rejected primarily on the ground that orders were passed under Section 74 of the Act and, therefore, the Petitioner was not entitled to any immunity under the aforesaid scheme. Hence, the Petitioner prays for restoration of the appeal with a condition to withdraw the application under the aforesaid notification.

5. Learned Government Advocate for the Respondents on the other hand would submit that having voluntarily opted to settle the dispute, the Petitioner withdrew the appeal that were filed on 19.09.2023 against the respective Assessment Orders dated 22.06.2023 and therefore, there is no scope for any restoration of the appeal that were voluntarily withdrawn by the Petitioner. Hence, it is prayed that the writ petition is liable to be dismissed.

6. That apart, learned Government Advocate for the Respondents would submit that in terms of sub Section 6 to Section 107 of the respective GST Enactments, the Petitioner has to pay 10% of the disputed penalty for restoration of the appeal.

7. It is submitted that the appeals also ought to have been filed together with pre-deposit of 10% of the disputed penalty. Specifically, a reference was made to proviso to sub Section 6 to Section 107 of the respective GST Enactments as per which, in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equivalent to 10% of the penalty has been paid by the appellant.

8. Learned counsel for the Petitioner however would submit that the aforesaid proviso was amended and brought to the statute only on 29.03.2025 and that prior to the same, the proviso read differently. It is further submitted that, even otherwise, the proviso, as amended with effect from 29.03.2025 vide Finance Act, 2025 (Act, 7 of 2025) will not further the case of the Respondents.

9. Having considered the submissions made by the learned counsel for the Petitioner and the learned Government Advocate for the Respondents, I am of the view that the submissions of the learned counsel for the respondent, the petitioner should further deposit 10% cannot be countenanced.

10. Admittedly, in this case, the Assessment Orders were passed on 22.06.2023 under Section 74 of the respective GST Enactments. Not only tax was demanded which was admittedly paid before the order was passed but also interest and penalty has been imposed under the respective Assessment Orders dated 22.06.2023.

11. The recourse of proviso to sub-Section (6) of Section 107 of the respective GST Enactments would apply only in the case of any order demanding penalty without involving a demand of any tax. Only under those circumstances, no appeal can be filed unless 10% of the disputed penalty is also pre-deposited.

12. In other words, where proceedings are for imposition of penalties simpliciter, an aggrieved person can file an appeal subject to a pre-deposit of 10% of disputed penalty. Where a composite orders passed whereby both penalty and tax is demanded, there cannot be any pre-deposit of the penalty. The only requirement is that to that extent, there is no dispute raised by the assessee insofar as tax demand is concerned, entire amount of tax has to be paid.

13. In this case, the Petitioner has also paid the disputed tax which stand recorded in the Assessment Orders dated 22.06.2023. Therefore, the Writ Petition is disposed by directing the 1st Respondent to restore the respective appeals and dispose them on merits and in accordance with law after hearing the Petitioner.

14. These Writ Petitions are disposed of with the above observations. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

13.10.2025

Index : Yes / No
Neutral Citation : Yes / No
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C.SARAVANAN, J.

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