IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.38931 and 38935 of 2025
and
W.M.P.Nos.43563, 43566, 43570 and 43573 of 2025

M/s.Venkatachalapathy Agencies,
Represented by it Proprietor
Poovaswamy Sivaprakash ... Petitioner in both W.Ps

Vs.

1.The Deputy Commissioner (CT),
GST Appeals,
Commercial Taxes Department,
The Nilgiris,
Tamil Nadu.

2.The Assistant Commissioner (ST),
Coonoor Assessment Circle,
The Nilgiris,
Tamil Nadu. ... Respondents in both W.Ps

Prayer in W.P.No.38931 of 2025: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of impugned order of rejection of appeal in Ref.No.ZD330925124531K in Form-GST APL-02 dated 11.09.2025 read with the rejection order of appeal in Ref.No.ZD3309250537057 dated

04.09.2025 in Form-GST APL-02 by the First Respondent herein, quash the same.

<u>Prayer in W.P.No.38935 of 2025</u>: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of impugned rectified Order in Ref.No.ZD330525335049G dated 30.05.2025 uploaded along with the summary of the order in Form-GSTDRC08 passed by the Second Respondent herein from the files of the Second Respondent herein, quash the same.

For Petitioner (In both W.Ps)	:	Mrs.Aparna Nandakumar
For Respondents (In both W.Ps)	:	Mrs.P.Selvi Government Advocate

<u>COMMON ORDER</u>

Mrs.P.Selvi, learned Government Advocate takes notice for the Respondents.

2. By this Common Order, both the Writ Petitions are being disposed of at the stage of admission itself with the consent of the learned counsel for the Petitioner and the learned Government Advocate for the Respondents.

3. In W.P.No.38935 of 2025, the Petitioner has challenged the impugned Order dated 30.05.2025 passed by the 2nd Respondent in Form GST DRC-08 under Section 161 of the respective GST enactments.

4. By the impugned Order dated 30.05.2025, the 2nd Respondent partly accepted the case of the Petitioner and rectified the Order that was passed earlier on 16.04.2025 for the Tax Period 2024-2025 in Form GST DRC-07.

5. Thus, by the impugned Order dated 30.05.2025, the demand was turned down to Rs.34,08,956/- after giving credit to the amount of Rs.5,00,000/- paid by the Petitioner *post facto* after 16.04.2025.

6. Aggrieved by the impugned Order dated 30.05.2025, the Petitioner had filed an appeal before the 1st Respondent/Appellate Authority on 30.08.2025.

7. The 1st Respondent/Appellate Authority rejected the appeal of the Petitioner against the impugned Order dated 30.05.2025 vide Order dated 04.09.2025 on the ground that the case did not warrant an interference as the earlier Order dated 16.04.2025 was rectified by the 2nd Respondent vide Order dated 30.05.2025.

8. Under these circumstances, the Petitioner appears to have represented the appeal once again on 08.09.2025 which has culminated in the Order dated 11.09.2025 impugned in W.P.No.38931 of 2025.

9. By the impugned Order dated 11.09.2025, the 1st Respondent/Appellate Authority rejected the appeal on the ground of limitation.

10. The specific case of the Petitioner is that the earlier Order dated 16.04.2025 stood merged with the impugned Order dated 30.05.2025 and therefore the Petitioner had rightly invoked the jurisdiction of the 1st Respondent/Appellate Authority by filing the appeal on 30.08.2025 which was however rejected by the 1st Respondent on the wrong-footing on 04.09.2025.

11. Learned counsel for the Petitioner would submit that although there is no procedure prescribed for re-presenting the appeal or for rectifying the order, the Petitioner's position arising out of the impugned Order dated 30.05.2025 in Form GST DRC-08 passed under Section 161 of the respective

GST enactments still remains unaddressed and therefore the rejection of appeal vide impugned Order dated 11.09.2025 on the ground of limitation warranting an interference.

12. Learned counsel for the Petitioner would further submit that at the time of filing of appeal on 30.08.2025, the Petitioner already pre-deposited 10% of the disputed tax amounting to Rs.3,40,896/-.

13. Learned Government Advocate for the Respondents on the other hand would submit that the Petitioner has not replied to the Show Cause Notice in GST DRC-01 dated 17.12.2024, which preceded the Order dated 16.04.2025 passed for the Tax Period from April 2024 to July 2024 and therefore, the Court may relegate the party to workout the remedy before the Original Authority following the consistent view taken by this Court by directing the Petitioner to deposit another 15% over and above 10% of the disputed tax, which was already deposited by the Petitioner at the time of filing of the appeal before the Appellate Authority, if the Petitioner so desires.

14. Learned Government Advocate for the Respondents would further

submit that there is no scope for filing the appeal for the 2nd time on 08.09.2025. The appeal filed by the Petitioner on 30.08.2025 was rejected by the 1st Respondent/Appellate Authority vide Order dated 04.09.2025 and therefore, even if a wrong Order was passed on 11.09.2025, it would not appropriate for the Petitioner to challenge the same by filing a Writ Petition instead of approaching the Respondents and therefore these Writ Petitions are liable to be dismissed.

15. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Government Advocate for the Respondents.

16. The right of appeal cannot be negated by simply rejecting the appeal itself on the ground that there was an Order passed on 30.05.2025 under Section 161 of the respective GST enactments, when indeed the Petitioner had filed an appeal against the aforesaid Order before the 1st Respondent/Appellate Authority.

17. Before passing the Order dated 04.09.2025 in response to the appeal filed on 30.08.2025 before the Appellate Authority, the Appellate

Authority ought to have heard the Petitioner and disposed of the same on merits. Therefore, to that extent, the rejection of appeal vide Order dated 04.09.2025 warrants an interference.

18. Although there is no procedure prescribed under the provisions of the respective GST enactments and the Rules made thereunder for re-presenting the appeal, this Court is of the view, the Order dated 04.09.2025 is neither acted as *res judicata* nor as a constructive *res judicata* as the Order dated 04.09.2025 was passed without giving an opportunity of personal hearing to the Petitioner and the appeal was dismissed *in limine* by the 1st Respondent/Appellate Authority, which cannot be sustained.

19. Considering the overall facts and circumstances of the case and in view of the discussions above, this Court is inclined to allow the Writ Petition in W.P.No.38931 of 2025 and accordingly, W.P.No.38931 of 2025 stands allowed.

20. In view thereof, this Court is inclined to dismiss the Writ Petition in W.P.No.38935 of 2025 and accordingly, W.P.No.38935 of 2025 stands dismissed.

21. The 1st Respondent/Appellate Authority shall entertain the appeal and dispose of the same on merits after hearing the Petitioner without reference to the aspect of limitation.

22. It is open to the Petitioner to canvass all the legal submissions before the 1st Respondent/Appellate Authority. No costs. Connected Writ Miscellaneous Petitions are closed.

14.10.2025

Neutral Citation : Yes / No

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To:

1.The Deputy Commissioner (CT),
GST Appeals,
Commercial Taxes Department,

The Nilgiris,
Tamil Nadu.

2.The Assistant Commissioner (ST),
Coonoor Assessment Circle,
The Nilgiris,
Tamil Nadu.

C.SARAVANAN, J.

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