APHC010255162025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3529]**
(Special Original Jurisdiction)

TUESDAY,THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 16635/2025

Between:

1. SHIVTEK INDUSTRIES PRIVATE LIMITED, (PRESENTLY M/S. SHIVTEK SPECHEMI INDUSTRIES LIMITED) (REPRESENTED BY ITS AUTHORISED SIGNATORY), SURVEY NO. 62A PART, GONDIPARLA, KURNOOL DISTRICT, ANDHRA PRADESH- 518004

...PETITIONER

AND

1. ADDITIONAL COMMISSIONER OF CENTRAL TAX, TIRUPATHI GST COMMISSIONERATE, 9/86-A, AMARAVATHI NAGAR, WEST CHURCH COMPOUND, TIRUPATI, ANDHRA PRADESH- 517502.
2. COMMISSIONER OF CENTRAL TAX AND CUSTOMS APPEALS, D.NO.3-30-15, RING ROAD, GUNTUR, ANDHRA PRADESH- 522006.
3. UNION OF INDIA, (REPRESENTED BY ITS SECRETARY (REVENUE)) NORTH BLOCK, NEW DELHI- 110001.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased topleased to issue an appropriate writ, order or direction in nature of writ of mandamus, declaring the impugned Order-In-Appeal No. TTD-GST-000-APP-006-2023-24 dt.05.02.2024 passed by the 2nd respondent in the appeal filed against the order-in-original no. 4/2023-24 CGST(AD) dt. 19.05.2023 along with summary of order in Form DRC-07 dt.22.08.2023 passed by the 1st respondent as being illegal, passed without authority of law, violative of the principles of natural justice, without jurisdiction, violative of Articles 14 and 19(1)(g), 265 and 348 of the Constitution of India and against the provisions of COST Act, 2017, IGST Act, 2017 and Rules and Notifications issued thereunder and pass

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Pleased to stay the operation of the impugned Order-In-Appeal No. TTD-GST-OOO-APP-006-2023-24 dt.05.02.2024 passed by the 2nd respondent and pass

IA NO: 2 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased Pleased to direct the 2nd respondent to provide a certified English translation copy of the impugned order-in-appeal no. TTD-GST-OOO-APP-006-2023-24 dt.05.02.2024 and pass

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased May be pleased to grant leave to the Deponent on behalf of the respondents No. 1 and 2 and 3 in WP No. 16635 of 2025 to file Counter Affidavit in above Writ Petition and pass

Counsel for the Petitioner:

1. Y SREENIVASA REDDY

Counsel for the Respondent(S):

1. VENNA HEMANTH KUMAR(CENTRAL GOVERNMENT COUNSEL)

The Court made the following order:

(per Hon'ble Sri Justice R Raghunandan Rao)

The petitioner, which was registered under the GST region had sought certain refunds. These refunds were granted. Subsequently, proceedings were initiated by way of a show-cause notice, dated 09.12.2022 seeking to recover the refunds on the ground that there was violation of Rule 96(10) of the CGST Rules, 2017. The said adjudication, resulted in an order of recovery, dated 19.05.2023. Along with such order of recovery, further penalty and interest was also levied under Section 75 and 50 of the CGST Act. Aggrieved by the said order, the petitioner had approached the appellate authority. After hearing both sides, the appellate authority, by an order, dated 05.02.2024 had confirmed the original order. Aggrieved by the same, the petitioner had approached this Court by way of the present writ petition.

2. The contention of the petitioner is that the entire proceedings have proceeded on the basis of Rule 96(10) of the CGST Rules and the same are untenable inasmuch as Rule 96(10) itself has been omitted, with effect from 08.10.2024, without any clause saving the actions initiated under the said provision. The petitioner relies upon an order of a Division Bench of this Court, dated 21.01.2026, passed in W.P.No.12412 and 25219 of 2025, holding that all actions initiated under Rule 96(10) of the CGST Rules would have to fail in view of omission of the said Rule without any savings clause.

3. Sri Venna Hemanth Kumar, the learned Standing Counsel for the respondents would contend that the proceedings initiated under Rule 96(10)

of the CGST Rules were completed even before the Rule was omitted and consequently same would be saved and orders of the original authority and the appellate authority do not require any interference on this ground.

4. The Division Bench of this Court, in the Judgment, dated 21.01.2026, had categorically held that once the rule stands omitted, without a saving clause, the same would have to be held to be non-existent and that all actions initiated under such Rule would also have to be set aside. It may also be noted that the Rule was omitted on 08.10.2024 while the order in appeal came to be passed on 05.02.2024 and thereafter, the present writ petition has been filed on 02.07.2025. As the present writ petition continues the challenge to the order of recovery of refund and payment of penalty etc., it would have to be held that the said proceedings were continuing and as such, the ratio of the judgment, dated 21.01.2026, would be applicable to this case.

5. Accordingly, this Writ Petition is allowed setting aside the order of assessment, dated 19.05.2023 and order in appeal, dated 05.02.2024. It would be open to the petitioner to seek recovery of pre-deposit amounts paid under this order. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R RAGHUNANDAN RAO, J

T.C.D.SEKHAR, J

Date: 16.06.2026
KA

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 16635/2025

Date: 16.06.2026
KA