

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION NO: 11760/2023

Between:

1. **AVANTI FEEDS LIMITED**, HAVING ITS CORPORATE OFFICE AT G-2, CONCORDE APARTMENTS, H. NO. 6-3-658, SOMAJIGUDA, HYDERABAD- 500082. REPRESENTED BY ITS AUTHORIZED SIGNATORY MR. C. RAMACHANDRA RAO, JOINT MANAGING DIRECTOR
2. **MR. A. INDRA KUMAR,, S/O** (LATE) A. VENKATESHWAR RAO, AGED ABOUT 61 YEARS, CHAIRMAN AND MANAGING DIRECTOR, AVANTI FEEDS LIMITED, HAVING ITS OFFICE AT.G-2, CONCORDE APARTMENTS, H. NO. 6-3-658, SOMAJIGUDA, HYDERABAD-500082.

...PETITIONER(S)

AND

- §1. DEPUTY COMMISSIONER OF STATE TAX, OFFICE OF THE JOINT COMMISSIONER (ST), SPECIAL CIRCLE, RAJAMAHENDRAVARAM DIVISION, RAJAMAHENDRAVARAM.
2. PRINCIPAL COMMISSIONER OF STATE TAX, OFFICER OF THE CHIEF COMMISSIONER OF STATETAX, DOOR NO. 12-468-4, ADJACENT TO NH-16, SERVICE ROAD, KUNCHANAPALLY, GUNTUR DISTRICT ANDHRA PRADESH - 522501.
3. UNION OF INDIA, THROUGH THE SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI - 110001
4. THE STATE OF ANDHRA PRADESH, THROUGH ITS PRINCIPAL SECRETARY, REVENUE (CT) DEPARTMENT, SECRETARIAT, VELAGAPUDI, GUNTUR DISTRICT.

...RESPONDENT(S):

Date of Judgment pronounced on : 01-04-2026

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?

2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:

3. Whether the Lordship wishes to see the fair copy : Yes/No
of the Judgment?

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO**

***THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR**

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% Dated: 01-04-2026

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...RESPONDENT(S):

! Counsel for the Petitioner :Sri K. Vivek Reddy, learned senior counsel appearing on behalf of Sri Vimal Varma Vasi Reddy

^Counsel for Respondents :The earned Government Pleader for Commercial Taxes

<GIST :

>HEAD NOTE:

? Cases referred:

¹ (2021) 95 GSTR 131:2021 SCC Online mad 13910

² 2025 AHC 143407

³ (1998) 8 SCC page 1

⁴ (2022) 10 SCC 700:(2022) 101 GSTR 262:2022 SCC online SC 657

⁵ (2023) 156 taxmann.com 448 (Kerala)

⁶ MANU/SC/0430/2004: AIR 2004 SC 2321

⁷ MANU/AP/1501/2025

APHC010223782023



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

[3529]

WEDNESDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NO: 11760/2023

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2. MR. A. INDRA KUMAR,, S/O (LATE) A. VENKATESHWAR RAO, AGED ABOUT 61 YEARS, CHAIRMAN AND MANAGING DIRECTOR, AVANTI FEEDS LIMITED, HAVING ITS OFFICE AT G-2, CONCORDE APARTMENTS, H. NO. 6-3-658, SOMAJIGUDA, HYDERABAD-500082.

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4.THE STATE OF ANDHRA PRADESH, THROUGH ITS PRINCIPAL SECRETARY, REVENUE (CT) DEPARTMENT, SECRETARIAT, VELAGAPUDI, GUNTUR DISTRICT.

...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, Direction or Order, particularly in the nature of Writ of Certiorari, a.Call for the records pertaining to the Impugned Notice dated 10 April 2023 bearing Case ID AD371122002279F, issued by Respondent No.1 under Section 73(5) of the AP GST Act and quash the same b.Declare that the Impugned Circular No. 80/54/2018 dated 31 December 2018 issued by the Tax Research Unit, Department of Revenue, under the Respondent No.3, is invalid as it has already been set aside by the Honourable Madras High Court in Jenefa India v. UOI (Judgment dated 5 October 2021 in WP No. (MD) No. 16770 to 16776 of 2019), and cannot be relied upon by the Respondent Nos. 1 and 2 in the Impugned Notice dated 10 April 2023 bearing Case ID AD371122002279F, issued by Respondent No.1 under Section 73(5) of the AP GST Act and to pass

IA NO: 1 OF 2023

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 to dispense with the requirement of filing the certified copies of 1) Impugned Notice dated 10 April 2023 bearing Case ID AD371122002279F, issued by Respondent No.1 under Section 73(5) of the AP GST Act and 2) Impugned Circular No. 80/54/2018 dated 31 December 2018 issued by the Tax Research Unit, Department of Revenue, under the Respondent No.3, pending disposal of the above writ petition and to pass

IA NO: 2 OF 2023

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 to suspend the Impugned Notice dated 10 April 2023 bearing Case

ID AD371122002279F, issued by Respondent No.1 under Section 73(5) of the AP GST Act pending disposal of the above writ petition and to pass

IA NO: 3 OF 2023

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 to stay all further proceedings pursuant to the impugned Notice dated 10 April 2023 bearing Case ID AD371122002279F, issued by Respondent No.1 pending disposal of the above writ petition and to pass

IA NO: 4 OF 2023

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 to Suspend the Operation of the Impugned Circular No. 80/54/2018 dated 31 December 2018, issued by the Tax Research Unit, Department of Revenue, under the Respondent No.3 pending disposal of the above writ petition and to pass

IA NO: 5 OF 2023

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 to direct Respondent No.1 not to take any coercive steps in relation to the Impugned Notice dated 10 April 2023 bearing Case ID AD371122002279F, issued by Respondent No.1 pending disposal of the above writ petition and to pass

IA NO: 1 OF 2024

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 to vacate the interim orders dated 05.05.2023 in WP No. 11760 of 2023 and to pass

IA NO: 2 OF 2024

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 to condone the delay of 118 days in filing the rejoinder by permit the petitioners to file their rejoinder to the Vacate stay petition and counter affidavit filed by the respondent no.1 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 permit the Petitioners to file this Additional Affidavit along with material papers numbered as Annexures P-20 to P-28 in the present Writ Petition in the interests of justice.

Counsel for the Petitioner(S):

- 1.VIMAL VARMA VASI REDDY

Counsel for the Respondent(S):

- 1.HARINATH N (DEPUTY SOLICITOR GENERAL OF INDIA))
- 2.GP FOR COMMERCIAL TAX
- 3.

Date of Reserved	:	23.02.2026
Date of Pronouncement	:	01.04.2026
Date of Upload	:	01.04.2026

The Court made the following Order:*(per Hon'ble Sri Justice R. Raghunandan Rao)*

Heard Sri K. Vivek Reddy, learned Senior Counsel, appearing on behalf of Sri Vimal Varma Vasi Reddy, learned counsel for the petitioner, and the learned Government Pleader of Commercial Tax, appearing for the respondents.

2. The first petitioner is a limited Company, which is registered under the CGST Act and is engaged in the business of manufacturing and supplying aquatic feed. For the purposes of manufacturing the said aquatic feed, the 1st petitioner imports certain Inputs, such as fish meal, soya, algal oil. The petitioner had claimed exemption from payment of tax, under the IGST Act, in relation to the import of some of these inputs in relation to the assessment years 2017-18 to 2022-23. It may also be recorded that the 1st petitioner has been allotted to the Central Jurisdiction and not the State Jurisdiction.

3. The 1st respondent, Deputy Commissioner of State Tax, on the basis of an authorization issued by the Joint Commissioner, Sales tax, Rajamahendravaram, had inspected the business place of the 1st petitioner on 11.11.2022. Thereafter, the 1st respondent issued an intimation of tax, ascertained as being payable, under Section 73(5) of the GST Act, read with Rule 142(1A), on 19.12.2022. In this intimation, the 1st respondent informed the 1st petitioner that some of the claims, of the 1st petitioner, relating to

exemption and classification of goods was not correct and sought an explanation from the 1st petitioner. The claim of the petitioner for exemption on the supply of Rovimix AVP Mineral, which is an input in the manufacturing of aquatic feed, in the course of import, and import of fishing meal was also sought to be disputed. The 1st petitioner, replied to this intimation, by a reply, dated 12.01.2023. In this reply, the 1st petitioner, replied on the merits of the issues, raised in the said intimation. Thereafter, the 1st respondent issued a second intimation, dated 10.04.2023. This Intimation, which is in the form of a show cause notice has been challenged, along with Circular No.80/54/2018-GST, dated 31.12.2018, issued by the Tax Revenue Unit, Department of Revenue, which denied the benefit of exemption given by the Central Government under an exemption Notification issued under Section 6(1) of the IGST Act.

4. The case of the petitioners, as reiterated by Sri K. Vivek Reddy, learned Senior Counsel, appearing on behalf of Sri Vimal Varma Vasi Reddy, learned counsel for the petitioner is as follows:

i) It is the admitted case of the 1st respondent that the 1st petitioner has been allocated to the Central Jurisdiction. As such no State GST authority can initiate any proceedings against the 1st petitioner;

ii) The IGST Act read with the relevant provisions of the Constitution of India bar any State Authority, under the GST Acts, to initiate, continue or complete any proceedings under the IGST Act;

iii) Section 2(3) and Section 28 of the Customs Act, 1962 read with the proviso to Section 5(1) of the IGST Act makes it clear that the jurisdiction to assess the IGST payable, in the course of import of goods, into India, vests solely with the authorities under the Customs Act and no authority under any of the GST Acts can undertake such an exercise;

iv) Circular No. 80/54/2018-GST, dated 31.12.2018, is ultra vires the exemption notification, under Section 6(1) of the IGST Act as the said circular imposes conditions which were not envisaged in the exemption Notification Issued under Section 6(1) of the IGST Act. Further, the said Circular had already been set aside by the Hon'ble High Court of Madras in **Jenefa India vs. Union of India**¹, by a Judgment dated 05.10.2021 in W.P(MP) 16770 to 16776 of 2019.

5. The learned Senior Counsel would also contend that various issues which had not been raised in the intimation, dated 19.12.2022, have been raised in the fresh intimation, dated 10.04.2023, and the same is not permissible.

¹ (2021) 95 GSTR 131:2021 SCC Online mad 13910

6. The 1st respondent had filed a counter affidavit. In this counter affidavit, it is submitted that the Writ Petition itself is not maintainable as it has been filed against the show cause notice, without exhausting the remedy of approaching the 1st respondent. The 1st respondent relying upon Section 6 of the APGST Act contends that the officers, under the APGST Act are authorised, by virtue of Section 6, to issue any orders or proceedings under the CGST Act and such cross empowerment has been discussed by the GST Council in its 9th meeting on 16.01.2017 wherein it was decided that no separate notification is required for authorities under the State GST Acts to exercise powers conferred on Central Tax Officers.

7. The 1st respondent, on the basis of Section 6 would further contend that the notification issued by the Chief Commissioner of Commercial Tax, dated 30.06.2017, authorizes the 1st respondent to take up assessment in relation to the 1st petitioner, even under the IGST Act. The 1st respondent has also set out the case of the 1st respondent, on the merits of the case.

8. The learned Government pleader has filed written submissions. In these submissions, the learned government pleader has sought to argue on the merits of the case. As this court is on the question of jurisdiction, these contentions are not being considered. The learned government pleader, on the question of jurisdiction, would contend that Section 6 of the APGST Act, cross empowers all officers under the APGST Act, to discharge functions under the CGST and IGST Acts. He relies upon an office memorandum, dated

30.06.2017, issued by the joint secretary of the GST Council, clarifying that officers under one Act can take action against tax payers, even in relation to proceedings under the other GST Acts. He would also rely upon the judgment of the Hon'ble High Court of Allahabad, in Shree **Maa Trading Company and two Ors., Vs. State of U.P and three Ors**². Apart from the above, a further contention is raised. The 1st Respondent had initiated proceedings on 12.12.2022, while the Customs authorities had initiated proceedings, only on 08.08.2025. Thus, the action of the 1st respondent is not a parallel proceeding initiated after the customs proceedings had been initiated.

Consideration of the Court:

8. The preliminary issue, before this Court, is on the maintainability of the writ petition. In the normal course, this Court would not interfere, at the stage of a show cause notice **unless it is demonstrated that the show cause notice itself is wholly without jurisdiction**. The Judgment of the Hon'ble Supreme Court in **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors.**,³ relied upon by the learned Senior Counsel, for the petitioners, sets out the above principle. In the circumstances, this Court would have to first go into the issue of whether the show cause notice has been issued by an officer who has jurisdiction.

² 2025 AHC 143407

³ (1998) 8 SCC page 1

9. The contentions of the learned Senior Counsel, are twofold. Firstly, no officer, under the GST regime, can exercise any power or authority, for assessing or collecting IGST, in relation to import of goods, and such power can be exercised, only by an officer, under the Customs Act, 1962. Secondly, an officer, under the APGST Act, cannot exercise any power or function, under the IGST Act.

10. The IGST Act has been enacted for taxing Inter State supply of services and goods and supply of services or goods imported into India or exported out of India. A reading of Section 7 of the IGST Act, extracted below, makes it clear.

Section 7. Inter-State supply.

(1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in---

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

(3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in---

(a) two different States; or

(b) two different Union territories; or

(c) a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.

(4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

(5) Supply of goods or services or both,---

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

11. The levy of collection of Tax, on such Inter-State supply of goods of goods or services is set out in Section 5 of the IGST Act. Section 5(1), which is relevant to this case, is set out below:

5. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both; except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

12. The Proviso to Section 5(1) stipulates that IGST, on the supply of goods, which are imported into India, are to be levied and collected as set out in section 3 of the Customs Act, 1975, on the value determined under the Customs Act, at the point where customs duties are levied on such goods, under Section 12 of the Customs Act.

13. Section 12 of the Customs Act states that duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act or any other law for time being in force, on goods imported into or exported from India. Another relevant provision is Section 2(2) of the Customs Act, 1962, which defines assessment in the following manner:

Section 2[(2) —"assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to—

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;]

14. Apart from the definition of assessment, this Court would also have to notice Section 28 of the Customs Act which reads as follows:

Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.

28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, --

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

[Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the the person chargeable with duty or interest in such manner as may be prescribed;]

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, --

- (i) his own ascertainment of such duty; or
- (ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

[Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.]

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:

[Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under

section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.]

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,--

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid] or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion –

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub- section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years

shall be computed from the date of receipt of information under sub-section (5).

(7) In computing the period of two years referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

(7A) Save as otherwise provided in clause (a) of sub-section (1) or in sub-section (4), the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed, and the provisions of this section shall apply to such supplementary notice as if it was issued under the said sub-section (1) or sub-section (4).

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),--

(a) within six months from the date of notice, in respect of cases falling under clause (a) of sub-section (1);

(b) within one year from the date of notice, in respect of cases falling under sub-section (4).

[Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under

which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:

Provided further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued;]

(9A) Notwithstanding anything contained in sub-section (9), where the proper officer is unable to determine the amount of duty or interest under sub-section (8) for the reason that—

(a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or

(b) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or

(c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or

(d) the Settlement Commission has admitted an application made by the person concerned, the proper officer shall inform the person concerned the reason for non-determination of the amount of duty or interest under sub-section (8) and in such case, the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist.]

(10) Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on

such amount whether or not the amount of interest is specified separately.

(10A) Notwithstanding anything contained in this Act, where an order for refund under sub-section (2) of section 27 is modified in any appeal and the amount of refund so determined is less than the amount refunded under said sub-section, the excess amount so refunded shall be recovered along with interest thereon at the rate fixed by the Central Government under section 28AA, from the date of refund up to the date of recovery, as a sum due to the Government.

(10B) A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.

(11) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6th day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section.

15. The proviso to Section 5(1) was considered by the Hon'ble Supreme Court in the case of **Union of India and Another vs. Mohit Minerals Private Limited**⁴.

The proviso to Section 5(1) of the IGST Act clarifies that the tax is levied on goods imported into India, in accordance with Section 3 of the Customs Tariff Act, 1975. The value is determined under the Customs Tariff Act at the point when the customs duties are levied in accordance with the Customs Act.

16. Section 2(2) stipulates that assessment, under the Customs Act, would not only include, the determination of the duty, tax or other sums under the Customs Act or the Customs Tariff Act, but would also include the determination of such taxes, etc, in relation to any other law, where such liability is to be determined, with reference to the provisions of the Customs Tariff Act or under any notification issued under the Customs Act. In the present case, the rate of IGST and the quantum of IGST payable on the supply of goods, in the course of import of such goods, is to be done on the basis of the provisions of the Customs Tariff Act. Consequently, the assessment, for the purpose of IGST Act, would have to be conducted by the customs authorities and not the authorities under the IGST Act. This interpretation would not render the authorities, under the IGST Act, without any function at all. The said officers and authorities would still be necessary for assessing and collecting IGST on the movement of goods within India. The

⁴ (2022) 10 SCC 700:(2022) 101 GSTR 262:2022 SCC online SC 657

provisions of Section 2(2) and Section 28 were considered by the Hon'ble High Court of Kerala in the case of **Ajwa Dry Fruit Impex vs Union of India**⁵. The learned single Judge of the Hon'ble High Court of Kerala after considering similar issues, had held as follows:

6. Mr. Ajoy P. B., Learned Counsel for the Revenue opposed the contention of the Learned Counsel for the petitioner that Sub-section (2) of Section 2 defines the assessment order. If the definition of assessment order is considered, it is not confined only to the Customs duty but, it is in respect of every duty, cess or tax which is applicable on the imported goods. Therefore, the contentions raised by the Learned Counsel for the petitioner that the impugned Exhibit P-1 assessment order passed under Section 28 is without jurisdiction has no substance. Learned Counsel for the respondents has also placed reliance on the case of Canon India Private Limited (M/s.) v. Commissioner of Customs (2021 KHC 6151) in support of his contention to say that the assessing authority under the provisions of Section 28 is empowered to assess evasion/non payment of not only Customs duty but, any other tax, cess levied or duty on which imported goods attract. Learned Counsel for the petitioner also submits that this is a question of classification of the goods and therefore instead of filing the petition, the petitioner ought to have been approached the appellate authority against the said order.

7. I have considered the submissions. This Court is required to consider whether the order impugned in Exhibit P-1 is without jurisdiction and void ab initio. Sub-section (2) to Section 2 of the Customs Act, 1962 defines the assessment order which reads as under; "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so

⁵ (2023) 156 taxmann.com 448 (Kerala)

payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil.”

8. Sub-section (15) of Section 2 defines duty which means customs duty. Section 28 empowers the assessing authority to assess and recover the duties not levied, not paid, short levied or short paid or erroneously refunded. Section 28 therefore is not only in respect of duty which means customs duty but, it is in respect of duties which may be applicable on imported item/goods.

Even otherwise, the assessment order is defined under Sub-section 2 of Section 2 of the Customs Act empowers the assessing authority to determine the dutiability of any goods and the amount of duty/tax, cess or any sum so payable under the Customs Act or Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force, with reference to exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under the said Act or under the Customs Tariff Act or under any other law for the time being in force.17. In these circumstances, the question of whether an authority under the State GST Act is cross empowered under the provisions of Section 6 of the APGST Act, would not arise as the entire process of assessment and recovery of tax, set out in Section 2(2) read with section 28 of the Customs Act, is conferred solely on the customs authorities.

17. Another aspect of this matter which would also require to be noticed is the language of the proviso to Section 5(1). The said integrated tax would be levied and collected at the point when duties of customs are levied. In a large number of cases, customs duties would be levied and collected at the point of import. An officer under the State GST Act or the Central GST Act, who has been notified as the proper officer, situated in a State, which is not the entry point, of the goods, into India, would not be able to exercise jurisdiction at the point of entry of goods. Such jurisdiction can obviously be exercised only by the customs officers under the Customs Act.

18. In such circumstances, the inevitable conclusion, as to the authority who can levy and collect integrated tax, on goods being imported

into India, for supply of such goods can only be the customs officers under the Customs Act.

19. In the present case, another factor that needs to be noticed is the proceedings which have been initiated by the customs authorities under the Customs Act, by way of a notice, dated 24.01.2024. These proceedings culminated in an order dated, 08.08.2025, in which the Commissioner of Customs while accepting the contention of the 1st petitioner that the Rovimix AVP products, imported by the petitioner are eligible for exemption, had also held that the assessment and payment of IGST on imported goods would fall within the jurisdiction of the customs officers only. As already held by this Court, the jurisdiction to levy assess and collected integrated tax, on goods imported for the purpose of supply of such goods in India, would vest only with the customs authorities. In view of the proceedings initiated by customs authorities, it could not have been appropriate, even otherwise, for the 1st respondent to continue proceedings under the IGST Act.

20. The second issue, before this court, is whether an officer appointed under the APGST Act, can exercise jurisdiction, under the IGST Act, even in relation to those tax payers who have been allotted to the Centre?

21. Section 6 of the CGST Act, Section 6 of the APGST Act and Section 4 of the IGST Act, which read as follows, provide for cross empowerment:

Section 6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.

(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),--

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.

Section 4, of the IGST Act, reads as follows:

Section 4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.

Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

22. The issue of cross empowerment has been considered and answered by this court, in W.P.No.541 of 2026 and batch. This Court has held, in those writ petitions, that Section 6 of the CGST Act and Section 4 of the IGST Act, would empower an officer, under the APGST Act, to act under the CGST and IGST Acts, only if the tax payer has been allotted, administratively, to the State of Andhra Pradesh and such officer is the proper officer for such tax payer. In the present case, the petitioner has been, administratively, allotted to the Central Government. Therefore, the 1st respondent cannot claim the benefit of cross empowerment, under section 4 of the IGST Act, to assume jurisdiction, in the present case.

23. Before parting with this Writ Petition, it would also be necessary for this Court, to notice the fact that the Hon'ble High Court of Madras had already struck down Circular No.80/54/2018-GST, dated 31.12.2018. In view of the Judgment of the Hon'ble Supreme Court in the

case of **Kusum Ingots and Alloys Ltd., vs Union of India (UOI) and Ors**⁶, a circular, a notification, or legislation, which has been struck down by any High Court, would effectively result in the said legislation becoming inoperative across India and the legislation would have to be deemed to struck down in relation to the entire country. In such circumstances, there is no further need for this Court to strike down the said circular again.

24. As this Court has held that the intimation of 10.04.2023 is without jurisdiction, the petitioners would succeed and this Writ Petition is allowed, setting aside the impugned notice dated, 10.04.2024, as far as the said notice deals with the exemption claimed by the petitioner in relation to goods which have been imported to India. As far as the remaining turnovers and issues raised by the 1st respondent are concerned, the same would also have to be set aside on the ground that the said show cause notice relates to multiple years and such a show cause notice is not permissible, in view of the judgment of this Court in **S.J Constructions vs. The Assistant Commissioner and Ors**⁷.

25. The above order, would not, however, preclude the relevant authorities to take up assessment or other proceedings, under the relevant Acts, in case such authorities of the opinion that the petitioner is under further

⁶ MANU/SC/0430/2004: AIR 2004 SC 2321

⁷ MANU/AP/1501/2025

liability, to pay tax, for the import of the goods, mentioned above or in relation to any other liability.

26. Accordingly, this Writ Petition is allowed. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

RJS

THE HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO
&
THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION No: 11760 of 2023

(per Hon'ble Sri Justice R.Raghunandan Rao)

01.04.2026

RJS

