

APHC010221062025



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

[3529]

WEDNESDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION Nos:11028, 11206, 17671 & 20792 of 2025

W.P.No.11028/2025

Between:

S J Constructions

...PETITIONER

AND

The Assistant Commissioner and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.M V J K KUMAR

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX

W.P.No:11206/2025

Between:

Suma Infra

...PETITIONER

AND

The Deputy Assistant Commissioner list and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.M V J K KUMAR

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX

W.P.No:17671/2025

Between:

M /s. SKS Traders,

...PETITIONER

AND

The Additional Commissioner St and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.M V J K KUMAR

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX

W.P.No.20792/2025

Between:

Bhaarat Scrap Traders

...PETITIONER

AND

The Assistant Commissioner Of State Tax and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.PASUPULETI VENKATA PRASAD

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX

The Court made the following Common Order:

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

As a common issue has been raised in all these writ petitions, they are being disposed of by way of this common order.

2. Heard Sri M.V.J.K. Kumar, learned counsel appearing for the petitioner in all the writ petitions and learned Government Pleader for Commercial Tax appearing for the respondents in all the writ petitions.

3. In all these cases, the petitioners, who are registered persons under the GST regime, are challenging the orders of assessment, on the grounds of lack of signature and lack of DIN number. Apart from this, the petitioners also challenge the impugned orders on the ground that different assessment years have been bunched together and a composite show cause notice and a composite order had been issued in relation to different tax periods, and the same is impermissible and not in accordance with the provisions of the APGST Act, 2017.

4. The details of the assessment years for which the impugned orders have been passed are set out below:

W.P. No.	Assessment years	Assessment order date	Appeal order date
W.P.No.11028/2025	April 2018 to March 2022	21.07.2023	Nil
W.P.No.11206/2025	July 2017-2018 2018-2019 April 2019-Oct2022	03.05.2023	Nil
W.P.No.17671/2025	December 2021 to September 2022	13.01.2023	08.01.2025
W.P.No.20792/2025	December 2018 to June 2020	16.04.2024	NIL

5. The petitioners, after having raised various grounds of challenge, have sought a direction on the ground that a single assessment order passed,

for more than one financial year, would be violative of the provisions of Section 73 and Section 74 of the GST Act, 2017, and consequently set aside the orders of assessment / appeals.

6. The question of whether one assessment order can be passed in relation to more than one financial year had come up before various High Courts. The Hon'ble High Court of Karnataka, the Hon'ble High Court of Madras and the Hon'ble High Court of Kerala have held that a single, composite assessment order, cannot be passed for more than one financial year. On the other hand the Hon'ble High Court of Delhi as well as the Hon'ble High Court of Bombay had held that there can be one composite assessment order for more than one financial year. The details of the judgments passed by the respective High Courts are as follows:

Sl.No	Citation	Description of the Document
1.	AIR (1966) SC 1350	State of Jammu & Kashmir and Ors., vs. Caltex India (Ltd) dated 17.12.1965
2.	W.A.No.627/2025	M/s. Tharayil Medicals vs. The Deputy Commissioner and Ors., dated 08.04.2025
3.	W.A.No.258/2025	Joint Commissioner (Intelligence & Enforcement) vs. Lakshmi Mobile Accessories dated 05.02.2025
4.	(2024) 168 Taxmann 12 (Karnataka)	Chimney Hills Education Society vs. Additional Commissioner of Central Tax
5.	(2024) GSTR 449	Titan Company Ltd., Vs. The Joint Commissioner of GST * Central Excise, Salam and Ors., dated 18.12.2023.
6.	W.P.No.16500/2024	M/s. Bangalore Golf Club Vs. Assistant

		Commissioner of Commercial Taxes (Enforcement) dated 07.08.2024
7.	W.P.No.17239/2025	Ms. RA and Co vs. The Additional Commissioner of Central Taxes dated 21.07.2025
8.	W.A.Nos.2389 & 1397/2024	The Joint Commissioner of GST and Central Excise Salem Commissionerate, Salem vs. Titan Company Ltd., dated 27.03.2025
9.	W.P.(C).4853/2025 CM APPL 22194/2025 CM APPL 22195/2025	29.07.2025
10.	W.P.No.19381/2024	06.01.2025

7. The High Court at Madras dealt with this issue in **Titan Company Ltd., vs. Joint Commissioner of GST and Central Excise, Salem**¹. In this case, while dealing with the question of bunching of show cause notices for five different assessment years, the Hon'ble High Court at Madras, after referring to the judgment of a Constitution Bench of the Hon'ble Supreme Court in **State Jammu & Kashmir and Ors., vs. Caltex India Ltd.**,², had held that a single show cause notice cannot be issued for more than one financial year. However, since the issue was before the Hon'ble High Court of Madras, at the stage of show cause notice, the respondents were directed to consider the application of the petitioner for splitting up the show cause notices. An appeal was filed against the said order and the said decision was not

¹(2024) 124 GSTR 449 (Mad)

²AIR 1966 SC 1350

disturbed and directions were issued to essentially comply with the directions given by the learned Single Judge.

8. The aforesaid judgment of the Hon'ble High Court of Madras was followed by the Hon'ble High Court of Karnataka in **M/s. Bangalore Golf Club vs. Assistant Commissioner of Commercial Taxes (Enforcement)**, which quashed the show cause notices issued in relation to five assessment years.

9. Subsequently, the Hon'ble High Court at Madras had an occasion to consider this issue again in W.P.No.17239 of 2025 between **Ms. RA and Co Vs. The Additional Commissioner of Central Taxes, dated 21.07.2025**. A learned Single Judge, after an elaborate discussion of the provisions of the Act, had held as follows:

28. To put in a nutshell, this Court pass the following orders:

(i) The GST Act permits only for issuance of show cause notice based on the tax period. Therefore, if the annual return is filed, the entire year would be considered as a tax period and accordingly, the show cause notice shall be issued based on the said annual returns.

(ii) If show cause notice is issued before the filing of annual returns, the same can be issued based on the filing of monthly returns;

(iii) If show cause notice is issued after the filing of annual returns or after the commencement of limitation, the said notice shall be issued based on the annual returns with regard to the relevant financial year.

(iv) No show cause notice can be clubbed and issued for more than one financial year since the same is impermissible in law.

(v) In this case, without any jurisdiction, the impugned order came to be passed for more than one financial year, which is impermissible in law and hence, the same is liable to be quashed. Accordingly, the impugned order stands quashed based on the aspect of clubbing of impugned assessment order for more than one financial year.

10. The Hon'ble High Court of Kerala in the case of **Joint Commissioner (Intelligence & Enforcement) vs. Lakshmi Mobile Accessories**, had independently arrived at the conclusion that a single show cause notice cannot be issued for more than one assessment / financial year. Subsequently a Division Bench of the Hon'ble High Court of Kerala considered the question of whether a composite show cause notice can be issued and separate orders for each assessment year could be passed on the basis of such a composite show cause notice. The Hon'ble High Court of Kerala held that such a course of action is not permissible.

11. On the other hand, the Hon'ble High Court of Delhi in **Ambika Traders Through Proprietor Gaurav Gupta vs. Additional Commissioner, Adjudication DGGSTI CGST, Delhi North (W.P.(C) 4853/2025, CM APPL. 22194/2025 & CM APPL. 22195/2025)**, had held that a composite show cause notice can be issued in relation to any number of assessment periods / years. The Hon'ble High Court at Bombay had taken the same view on the ground that there was nothing in Section 74, which prohibited an authority from issuing a notice for any period, provided said notice is given at least six

months prior to the time limit specified under Section 74 (10). In the light of the conflicting decisions, a review of the relevant provisions would be necessary.

12. The relevant provisions are Sections 2(97), 2(106), 39(1) & (2) Section 44(1) and Sections 73 and 74, which read as follows:

2(97) “return” means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder;

2(106) “tax period” means the period for which the return is required to be furnished;

Section 39. Furnishing of Returns- (1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form, manner and within such time as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed.

Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein.

Section 39(2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the state inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.

Section 44. Annual return- (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as maybe prescribed on or before the thirty-first day of December following the end of such financial year.

(2) xxxxxx

Section 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement of facts- (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section(1), the proper officer may serve a statement, containing the details of tax not paid or short paid or

erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3) pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

Section 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful-misstatement or suppression of facts- (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful- misstatement or suppression off acts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause why he should not pay the amount specified in the notice along

with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section(1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub- section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any willful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the

amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty five per cent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded

Explanation-I:- For the purposes of section 73 and this section,-

(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person

have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation II:- For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

13. The scheme of the Act, is that GST is payable on supplies of goods and services, at the rates fixed under the schedules and notifications that would be issued by the GST Council. This GST is assessed and calculated as per the provisions set out in the Act. The provisions under Section 62 providing assessment of non-filers of returns and Section 63 providing assessment of unregistered persons etc., can be ignored for the purpose of this case. The primary provisions for determination of tax are Sections 73 and 74.

14. Section 73 is applicable where tax has not been determined and paid properly, for reasons other than fraud or willful-misstatement or suppression of facts. Section 74 applies to determination of tax where such tax has not been properly determined or tax not paid or calculated on account of fraud, willful-misstatement or suppression of facts. Both these provisions envisage issuance of notice to the registered person for bringing to his

attention, the view of the competent authority that appropriate tax has not been disclosed and paid.

15. The question that has now arisen is whether such a notice has to be given only in relation to specified period or whether such a notice can be given for any period. The further question would be whether one order of assessment/penalty has to be passed for each specified period or whether it can be issued, in relation to any period.

16. For this purpose, Section 73(3) and (4) are relevant. Under Section 73(3) the notice that has to be issued can be for “any period”. The Hon’ble High Court of Delhi, in the aforesaid judgment, had held that the term “any period” cannot be restricted to a specified period but would mean any length of period. The Hon’ble High Court at Madras had taken the opposite view. The Hon’ble High Court at Madras held that while the term “any period” has been used in Section 73(3), the language in Section 73(4) is “such tax periods”. The Hon’ble High court at Madras then went into the definition of tax period as specified in Section 2(106) to mean that a period for which a return is to be filed. Since return, as defined in Section 2(97) is a return for a month or a year, the Hon’ble High Court at Madras had come to the conclusion that the term “any period” would have to be understood, in the light of the use of the term “such tax periods” in Section 73(4) and consequently “any period” would have to be understood to be a tax period. We would respectfully follow the view taken by the Hon’ble High Court at Madras, in as much as, the effect of Section 73(4) and Section 73(3) had not been brought to the notice of the

Hon'ble High Court of Delhi. With all due respect, the interpretation, of the interplay between Section 73(3) and Section 73(4), placed by the Hon'ble High Court at Madras appears to be the correct interpretation.

17. Section 74(3) is *in parimateria* with Section 73(3). However, sub-section (4) of Section 74 does not contain the term "such tax period". This non mention would not, in our opinion, make any difference to the aforesaid interpretation. Apart from this, there are certain other provisions, which would also have to be considered. Any interpretation of an Act should not result in some of the other provisions becoming otiose or reduced in scope. As rightly pointed out by the Hon'ble High Court at Madras, the right of a registered person to obtain benefit under Section 128 of APGST Act as well as the right to invoke the remedy of appeal against the orders of assessment either under Section 73 or under Section 74 would get impacted if a common order is permitted to be issued in relation to more than one assessment / financial year.

18. In the circumstances, we are of the opinion that a single show cause notice or a single composite assessment order cannot be passed in relation to more than one tax period of either a month if the assessment is taken up before the due date for filing of the annual return or for more than one year if the due date for filing of annual return has been reached.

19. Accordingly, the writ petitions are disposed of setting aside the aforesaid impugned orders leaving it open for the respondents to initiate fresh proceedings, for each assessment year separately. Needless to say the

period from the date of passing of the impugned order till the date of receipt of this order shall be excluded for the purpose of limitation. 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

Js.

THE HON'ABLE SRI JUSTICE R RAGHUNANDAN RAO
AND
THE HON'BLE SRI JUSTICE T.C.D. SEKHAR

WRIT PETITION Nos:11028, 11206, 17671 & 20792 of 2025

(per Hon'ble Sri Justice R Raghunandan Rao)

17th September, 2025

Js