

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

W.P.No.1463 of 2025

Between:

M/s. The Cotton Corporation of India,
Rep.by its General Manager, Mr. Rajendra Shah,
Office at 5-60-2/6, 4/2, Ashok Nagar,
Kapas Bhavan, Lakshmpuram, Guntur-522 002.

... **Petitioner**

And

- § 1. Assistant Commissioner (ST) (Audit) (FAC),
Regional GST Audit & Enforcement Office,
Vijayawada.
2. State of Andhra Pradesh,
Rep.by its Chief Secretary and Special Chief Secretary
To Government (FAC), State Tax Department,
Velagapudi, Amaravathi, Guntur District.
3. Union of India, Rep. by its Secretary,
Government of India, Ministry of Finance,
3rd Floor, Jeevan Deep Building, Sansad Marg,
New Delhi-110 001.

... **Respondents**

Date of Judgment pronounced on : 05-02-2025

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

HON'BLE SRI JUSTICE HARINATH N.

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether the Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

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*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

HON'BLE SRI JUSTICE HARINATH N.

+ W.P.No.1463 of 2025

% Dated: 05-02-2025

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... Respondents

! Counsel for petitioner : Karthik Ramana Puttamreddy

^Counsel for Respondents : G.P. for Commercial Tax

<GIST :

>HEAD NOTE:

? Cases referred:

1. (2010) 12 SCC 210

2.1981(2) W.L.R.609(HL)

APHC010026822025



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

[3488]

WEDNESDAY ,THE FIFTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH N.

WRIT PETITION NO: 1463/2025

Between:

M/s. The Cotton Corporation Of India,

...PETITIONER

AND

Assistant Commissioner St Auditfac and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.KARTHIK RAMANA PUTTAMREDDY

Counsel for the Respondent(S):

1.GP FOR COMMERCIAL TAX

The Court made the following Order:

The petitioner is registered under the APGST Act, 2017. It received a show cause notice, dated 30.11.2024, in relation to the assessment year 2020-2021, calling upon the petitioner to show cause why an assessment should not be carried out in relation to short payment of tax etc. Notice was issued under Section 73(1) r/w Rule 142 of the APGST Rules.

2. The aforesaid notice, is challenged by the petitioner in the present Writ Petition.

3. The contention of the petitioner, as enunciated by Sri P. Karthik Ramana is as follows:

Section 73(10) of the APGST Act, stipulates that the assessment order, in relation to any assessment year, would have to be issued within three years from the due date for furnishing of annual return for the said financial year. Section 73(2) of the APGST Act stipulates that the notice under sub-section(1) which initiates the assessment proceedings, would have to be issued at least three months prior to the time limit specified in sub-section(10) for issuance of the order. Rule 81-A of the CGST Rules, which would be applicable to the proceedings under APGST Act, stipulates that the due date for filing the annual return, under Section 44 of the GST Act, for the financial year 2020-2021 would be the 28th day of February, 2022.

4. A conjoint reading of these provisions would make it amply clear that the last date for issuance of a show cause notice, for the assessment year 2020-2021 would be the 28th day of November, 2024. As the show cause notice has been issued on 30.11.2024, the same is beyond time and is *non est*. Reliance is placed on the Judgment of the Hon'ble Supreme Court in the State of **Himachal Pradesh and Another vs. Himachal Techno Engineers and**

Another¹ and the Judgment of the House of Lords in the case of **Dodds vs Walker**².

5. The learned Government Pleader would contend that a “month” would mean “a calendar month”. As the 28th of February is the end of the month of February, the last date of issuance of a notice would have 1st of December, 2024 or at the worst 30th of November, 2024. As the notice has been issued on 30.11.2024, it would be within limitation. Further, the provisions of Section 73(2) can at best be treated as a directory requirement and not a mandatory requirement whose violation would render the proceedings *non est*.

6. Sri P. Karthik Ramana, learned counsel for the petitioner would contend that the provisions of Section 73(2) of the GST Act, are mandatory. He makes this submission on the ground that the word used in Section 73(2) is “shall” and the same would have to be treated as a mandatory requirement. He would also contend that the legislature, in its wisdom, had determined that there should be a minimum period available to the tax payer to set out its case in the case of any show cause notice being issued in an assessment proceeding. He would draw the attention of this Court to Section 75 of the GST Act, which has certain inherent safeguards such as the requirement of a personal hearing and the facility of seeking adjournments thrice before a tax payer can be required to compulsorily attend before the authorities. He would

¹ (2010) 12 SCC 210

² 1981(2) W.L.R.609(HL)

submit that in such circumstances, the word “shall” would have to be understood to be a mandatory requirement.

7. The Hon’ble Supreme Court in the case of **Himachal Pradesh and Another vs. Himachal Techno Engineers and Another** were considering the time limit of three months set out in Section 34 of the Arbitration and Conciliation Act, 1996. In that case, the award had been passed, on 05.11.2007, and a petition under Section 34 was filed, on 11.03.2008. The said application was rejected on the ground that the period within which the application should have been filed was three months which would be 90 days reckoned from 11.11.2007 and ending on 10.11.2007 and a further grace period of 30 days which would end on 10.03.2008 whereas the application was filed on 11.03.2008. The Hon’ble Supreme Court after considering this issue had held as follows:

The High Court has held that ‘three months’ mentioned in section 34(3) of the Act refers to a period of 90 days. This is erroneous. A ‘month’ does not refer to a period of thirty days, but refers to the actual period of a calendar month. If the month is April, June, September or November, the period of the month will be thirty days. If the month is January, March, May, July, August, October or December, the period of the month will be thirty one days. If the month is February, the period will be twenty nine days or twenty eight days depending upon whether it is a leap year or not. Therefore when the period prescribed is three months (as contrasted from 90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days.

8. On this basis, the Hon’ble Supreme Court held that the petition filed, on 11.03.2008, was well in time and was not barred by limitation.

9. The Hon'ble Supreme Court, while considering this issue and after noticing that Section 3(35) of the General Clauses Act, 1897 defines a "month" as meaning a month reckoned as a British calendar, has also noted the Judgment of the House of Lords in **Dodds vs Walker**. The House of Lords while considering the period within which a tenant can approach the Court under the Landlord and Tenant Act, 1954 had observed as follows:

This simple general rule which Cockburn C.J. in *Freeman v. Read* (1863) 4 B. AND S. 174, 184 described as being "in accordance with common usage ... and with the sense of mankind," works perfectly well without need for any modification so long as there is in the month in which the notice expires a day which bears the same number as the day of the month on which the notice was given. Such was the instant case and such will be every other case except for notices given on the 31st of a 31 day month and expiring in a 30 day month or in February, and notices expiring in February and given on the 30th or the 29th (except in leap year) of any other month of the year. In these exceptional cases, the modification of the corresponding date rule that is called for is also well established: the period given by the notice ends upon the last day of the month in which the notice expires.

10. The aforesaid Judgments clearly laid down the principle that, when a period, available for a certain action, is defined in terms of months, it would mean that the corresponding date of the corresponding month would be the cutoff date. In the present case, the cutoff date for issuing an order is 28.02.2025. The three months period which would elapse from this date would be 28.11.2024. Since the notice was issued on 30.11.2024, it would be beyond the time stipulated under Section 73(2) of the GST Act.

11. The next issue that remains before this Court is whether the delay of two days in issuing the said notice can be condoned or whether the issue is not relevant as the provision is only directory.

12. As pointed out by the learned counsel, the GST Act, has put in place certain protections for tax payers. One of the primary protections is that orders cannot be passed against the tax payers, beyond the periods stipulated in the Act. It is settled law that these periods of limitation are mandatory and not orders can be passed beyond the periods set out in the Act. In such a situation, it would be difficult to hold that the stipulation as to the period of initiation, of such proceedings, by issuance of a show cause notice, would only be directory and not mandatory.

13. Another way of looking at this issue is the purpose for which such limitation has been prescribed under the Act. Section 75 of the GST Act, stipulates that the tax payer is not only entitled to a notice before any assessment is carried out but also the right of personal hearing, irrespective of whether such personal hearing is requested. When there is a possibility of an adverse order being passed against tax payer, the facility of obtaining at least three adjournments for personal hearing etc. The said provisions, protecting the interest of the tax payer, would be rendered otiose if notice should be permitted to be sent without a minimum waiting period. The said protections can then be bypassed by the authorities issuing show cause notice with a week's time or 10 days and calling upon tax payer to put forth his objections in

that shortened time. That does not appear to be intent of the provisions of Section 75(2) or Section 73 (10) of the GST Act.

14. For all the aforesaid reasons, we would have to hold that the time permit set out under 73(2) of the Act is mandatory and any violation of that time period cannot be condoned, and would render the show cause notice otiose.

15. Accordingly, this Writ petition is allowed quashing the show cause notice, dated 30.11.2024, issued by the 1st respondent, under Section 73 of the Central Goods and Services Tax Act and Andhra Pradesh Goods and Services Tax Act, 2017. There shall be no order as to costs.

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

R. RAGHUNANDAN RAO, J

HARINATH.N,J

RJS

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

&

HON'BLE SRI JUSTICE HARINATH N.

WRIT PETITION NO: 1463/2025

Dt: 05.02.2025

RJS