



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 20035 OF 2019 (T-RES)

BETWEEN:

M/S. GE T & D INDIA LIMITED,
(FORMERLY KNOWN AS M/S. ALSTOM T & D LIMITED),
NO.302, III FLOOR, EMBASSY CLASSIC NO.11,
VITTAL MALYA ROAD, BENGALURU.
REPRESENTED BY ITS
ASSISTANT MANAGER - INDIRECT TAX,
SHRI.VENKATESULU YENUGULA.

...PETITIONER

(BY SRI. JOSEPH PRABHAKAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH ITS PRINCIPAL SECRETARY,
FINANCE DEPARTMENT,
VIDHANA SOUDHA,
BENGALURU - 560 001.
2. THE COMMISSIONER OF COMMERCIAL
TAXES IN KARNATAKA,
"VANIJYA THERIGE KARYALAYA",
GANDHINAGAR,
BENGALURU - 560 009.
3. THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES (AUDIT)-1.7,
DVO-1, 3RD FLOOR, TTMC,
BMTc BUS STAND BUILDING,
YESHWANTHAPUR, BENGALURU-560022.

...RESPONDENTS

(BY SRI: K. HEMAKUMAR, AGA)

THIS WRIT PETITION IS FILED PRAYING TO QUASH THE
ENDORSEMENT DTD 05.01.2019 PASSED BY R-3 VIDE ANNEX-A TO





THE W.P. DIRECT THE R-3 TO GRANT THE BENEFIT OF KARASAMADHANA SCHEME, 2018 TO THE PETITIONER AND TO GRANT REFUND OF THE EXCESS AMOUNT RECOVERED FROM THE PETITIONER.

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner has sought to challenge the Endorsement dated 05.01.2019, copy of which is produced at Annexure-A, whereby the respondent- Authority has rejected the application of the complainant seeking for benefits under Karasamadhana Scheme ('the Scheme' for short), while observing that the Circular of the Commissioner of Commercial Taxes, Bengaluru at Circular No.1/2018-19 dated 13.08.2018 provides "the Assessee shall not be eligible for refund of any amount that may become excess as a result of adjustment of penalty/interest paid by him at the time of filing an appeal".

2. Respondent No.3 stated to have passed the re-assessment order dated 15.12.2016 under Section 9(2) of the Central Sales Tax Act, 1956 ('CST Act' for short), levying tax and interest of Rs.57,16,022/-. Pursuant to which, a demand notice is stated to have been raised. The petitioner is stated to have filed an appeal under Section 62 of the Karnataka Value



Added Tax Act, 2003 ('KVAT Act' for short) before the Joint Commissioner of Commercial Taxes (Appeals) along with an application for stay and has complied the requirement prescribed under Section 62(4) of KVAT Act on depositing 30% of the disputed amount. It is submitted that an order for stay of recovery of balance has been passed. It is submitted that the petitioner has deposited an amount of Rs.17,14,807/- on 17.01.2017 and has executed Bank Guarantee for the remaining demand. It is further borne out from the records that the appeal filed by the petitioner came to be dismissed on 07.07.2017, while upholding the re-assessment order passed by respondent No.3. As against such order, an appeal has been preferred before the Tribunal along with an application for stay and the appeal was numbered as STA No.475/2017. It is submitted that prior to grant of the order of stay, respondent No.3 has approached the petitioner's banker and has recovered an amount of Rs.43,23,703/- on 11.07.2018. It is submitted that an application for stay in the second appeal came to be heard by the Tribunal and order was passed only on 23.07.2018.



3. It is further submitted that during the pendency of the appeal, in light of introduction of "CST Karasamadhana Scheme 2018" by the order dated 04.08.2018, which provided for waiver of penalty and interest subject to payment of tax, the petitioner had opted for relief under the said Scheme.

4. It is further submitted that for the purpose of availing benefit under the Scheme, the Scheme requires that the appeal is to be withdrawn and accordingly, the appeal filed by the petitioner pending before the Tribunal was withdrawn to enable the petitioner to avail benefit under the said Scheme. The petitioner submits that he was eligible for refund of Rs.26,25,948/-, if benefit was extended under the Scheme and accordingly, he has pursued the application filed under the Scheme. It is submitted that the application has been rejected which has been assailed in the present petition.

5. The submission of Sri Joseph Prabhakar, learned counsel appearing on behalf of the petitioner is that the order of rejection by the Authority is only on the ground of the assessee not being eligible for refund of any amount that may become excess as a result of adjustment of amount or the



penalty or interest paid by him at the time of filing the appeal and that the amount that was paid at the time of filing the appeal was only a sum of Rs.17,14,807/- and accordingly, he submits that the Authority has not looked into the provisions of the Scheme in a proper manner and the impugned order requires to be set aside.

6. Learned counsel points out to Clause 2.4 of the Scheme and submits that what is referred to under 2.4 which has been taken note of by the Authority, that would however permit adjustment only of payment at the time of filing the appeal. It is submitted that the fact that during the pendency of the appeal, there has been subsequent recovery of the entirety of the demand from the banker of the petitioner as per the communication dated 04.07.2018, ought not to be subject matter of adjustment in terms of Clause 2.4 of the Scheme.

7. Learned counsel for the petitioner submits that under Clause 2.1 of the Scheme, the term specifically used is 'penalty or interest paid' and accordingly, even if there has been recovery from the banker of the petitioner by the respondent, the same cannot be construed to be interest or



penalty paid as contemplated under Clause 2.4 of the Scheme. Accordingly, the Endorsement at Annexure- A invoking in effect Clause 2.4 of the Scheme requires to be set aside.

8. Learned counsel appearing for the Revenue would submit that as on the date of the Scheme coming into force i.e., on 04.08.2018, the entirety of the tax, penalty and interest having been recovered, Scheme is inapplicable. It is further contended that invocation of Clause 2.4 of the Scheme is infact correct and the endorsement does not call for interference.

9. It is further contended by Sri Hema Kumar, learned AGA that though the second appeal was filed on 16.09.2017, no steps were taken to regularize the objection and obtain an order of stay and the matter was adjourned on several dates and stay was granted only on 23.07.2018. It is further submitted that as the Bank Guarantee was in operation only till 07.07.2017 and not having been extended and in the absence of any order of stay, bank guarantee was encashed prior to the order of stay on 23.07.2018.



10. Heard both sides. Perused the Endorsement at Annexure- A.

11. The Endorsement records the facts including filing of the appeal and in the conclusion it is observed that the Assessee has withdrawn its petition from the KAT and subsequently, filed an application under Karasamadhana Scheme and that there was recovery of arrears of Rs.43,23,703/-. It is further observed that only after full recovery of arrears, the assessee has withdrawn the petition to obtain benefit under Karasamadhana Scheme and filed application requesting for refund of interest amount. The Authority in the impugned endorsement has rejected the application referring to the Circular No.1/2018-19 dated 13.08.2018 while relying on the contents of the Circular which reads as under;

"The Assessee shall not be eligible for refund of any amount that may become excess as a result of adjustment of amount of penalty/interest paid by him at the time of filing the appeal."



12. It must be noticed that there is some ambiguity in the Endorsement and if the Endorsement is construed as having rejected the application only on the ground of Clause 2.4, which in substance has been referred to by placing reliance on the Circular dated 13.08.2018 at the concluding part of the impugned endorsement, there is no clarity as regards satisfaction of Clause 2.4 insofar as Clause 2.4 refers to the amount paid at the time of filing the appeal. In this case, the peculiar facts are that the petitioner has paid 30% of the amount due on 17.01.2013. If that were to be so, the question that requires adjudication by the Authority is whether a subsequent recovery from the banker of the petitioner after the appeal was taken on record and payment was made is an amount that could be taken note of.

13. Learned counsel for the petitioner has specifically raised a contention that Clause 2.4 refers only to the amount paid at the time of filing the appeal and accordingly, the subsequent recovery cannot be an amount deemed to have been paid by the petitioner and accordingly, recovery of 70% of the demand from the petitioner's banker, ought not to be taken



note of, while invoking Clause 2.4 is also an aspect that is required to be considered by the Authority. In light of the same, the matter requires reconsideration at the hands of the Authority after hearing the petitioner.

14. Learned counsel for the Revenue would submit that the Scheme itself is not applicable as the Scheme cannot be invoked where the entirety of the arrears has been realized. However, learned counsel for the petitioner would submit that the revenue cannot go beyond the stand already taken as reflected in the impugned order. Needless to state that the Authority is estopped from taking up a stand on a new contention or contrary to its stand while re-considering the issue.

It is made clear that in the event, if the application is rejected, needless to state that the petitioner cannot be placed in a position worse off and the petitioner is entitled for restoration of his appeal and that would be a logical course of action. Of course, what is challenged before this Court is an endorsement at Annexure-A. The observations made above



may be taken note of by the Tribunal, in the event, if the petitioner's application under the Scheme stands rejected.

15. Accordingly, the impugned endorsement at Annexure- A is set aside. All contentions are kept open. The Authority to reconsider and pass fresh orders, in light of the discussion made above.

**Sd/-
JUDGE**

PN