

**Court No. - 39**

**Case :-** WRIT TAX No. - 1417 of 2023

**Petitioner :-** M/S Kronos Solutions India Private Limited

**Respondent :-** Union Of India And 4 Others

**Counsel for Petitioner :-** Vinayak Mithal

**Counsel for Respondent :-** A.S.G.I., Anant Kumar Tiwari, Gaurav Mahajan

**Hon'ble Saumitra Dayal Singh, J.**

**Hon'ble Manjive Shukla, J.**

1. Heard Sri Shubham Agrawal, holding brief of learned counsel for the petitioner, Sri Anant Kumar Tiwari, learned counsel for the Union of India and Sri Gaurav Mahajan, learned counsel for the Revenue.

2. The present petition has been filed to assail the order dated 21.2.2023 passed by the Joint Director (CGST) (Appeals), Noida. The operative portion of the order reads as below:-

*"10. In view of my above discussion & findings I, hereby partially allow the instant appeal having no.102/GST/APPL-NOIDA/NO1/2020-21 dated 12.01.2021 filed by M/s Kronos Solutions India Private Limited, Floor 4,5 & 6, Plot No.5, Block-B, Tower-4, Okaya Centre, Sector 62, Noida - 201301 and remand back the matter to the original adjudicating authority for de novo adjudication after giving natural justice and chance to be heard to the appellant. The appellant is also directed to use the opportunity as and when called for the hearing."*

3. Solitary submission advanced by the learned counsel for the petitioner is, the above order at least operative portion has been passed in defiance to the provisions of Section 107(11) of CGST Act, 2017. For ready reference, that provision of law reads as below:-

*"11. The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:*

*Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:*

*Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74."*

4. On the other hand, learned counsel for the Revenue has raised a preliminary objection as to maintainability of the writ petition. He would submit, the impugned order is appealable under Section 112 of the Act. Therefore, no interference may be made.

5. A counter affidavit has also been filed on behalf of respondent nos. 3 and 5 to dispute the case of the petitioner, on merits.

6. Having heard learned counsel for the parties and having perused the record, the preliminary objection as to availability of statutory appeal is not sustained as the Tribunal has not yet been constituted. In any case, in face of complete failure on part of appeal authority to exercise its jurisdiction in accordance with law, the writ court may not hold itself to offer the necessary corrections required, at this initial stage itself.

7. Undeniably, the appeal authority may either confirm or modify or annul the order under appeal. In face of statutory prescription allowing for only three above described options to the appeal authority, no inherent power may remain be exercised by the appeal authority to set aside the order under appeal and remand the proceedings to the original authority. Any doubt in that regard has been clarified by the legislature itself by stating that the appeal authority shall not refer the matter back to the adjudicating authority.

8. Accordingly, no other issue is required to be adjudicated at this stage. Once the appeal authority is seen to have failed to exercise its jurisdiction in accordance with law, such an order may never be sustained. It is accordingly set aside and the matter is remanded to the appeal authority to pass a fresh order after hearing the parties afresh.

9. The writ petition stands allowed.

**Order Date :- 31.1.2024**

Salim

**(Manjive Shukla, J.) (S.D. Singh, J.)**