R

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 20TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 104505 OF 2023(T-RES)

BETWEEN:

M/S TEJAS ARECANUT TRADERS
LOCATED AT KHATA NO.70/C
SHOP NO.1, VINAYAKA COMPLEX, OPP KSRTC BUS STAND SIRIGERE
TQ: CHITRADURGA, CHITRADURGA-577541
KARNATAKA

THROUGH ITS PROPRIETOR
MR. KOLALARA SOMASHEKARAPPA MOHAN
AGED ABOUT 40 YEARS
S/O K N SOMASHEKHARAPPA,
RESIDENT OF DODDIGANAHAI
CHITRADURGA, KARNATAKA

...PETITIONER

(BY SRI.SAMEER GUPTA, ADVOCATE FOR
KUM.GAYATRI.S.R, ADVOCATE)

AND:

1 . JOINT COMMISSIONER OF COMMERCIAL TAXES
(APPEALS)
DHARWAD DIVSION,
HUBLI-580001

2 . ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, (ENFORCEMENT-1), HUBLI-580001

…RESPONDENTS

(BY SRI.SHIVAPRABHU.S.HIREMATH, AGA FOR R1 & R2)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO I) ISSUE A WRIT, ORDER, OR DIRECTION IN CERTIORARI QUASHING THE IMPUGNED ORDER STAYING M/S. TEJASARECANUT TRADERSGST/2023-24/APPEAL ORDER NO. DATED. 28.06.2023 (ANNEXURE-A) ORDER U/S 107(1) AND R/W 107(6)(A)(B) OF CGST AND SGST ACTS 2017 WHICH HAS BEEN PASSED WITHOUT JURISDICTION AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.09.2023, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned petition is filed seeking following reliefs:

> *"i) Issue a writ, order, or direction in certiorari quashing the impugned order bearing M/s. TejasArecanut TradersGST/2023-24/Appeal Order No. dated. 28.06.2023 (Annexure-A) Order U/s 107(1) and R/w 107(6)(A) & (B) of CGST and SGST Acts 2017 which has been passed without jurisdiction.*

ii) Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 1 to admit the appeal filed by the petitioner.

iii) Issue any other writ order or direction, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.

iv) Grant costs and interest and

v). Grant such further and other reliefs as the nature and circumstances of the case may require."

2. In the captioned petition, the appellate authority while examining the maintainability of the appeal under Section 107(6) of the Central Goods and Services Tax Act, 2017 (for short "CGST Act") has declined to admit the appeal on the ground that petitioner has failed to comply the mandate of pre-deposit and therefore, has declined to admit the appeal filed by the petitioner under Section 107(6) of the CGST Act.

3. The learned counsel for the petitioner reiterating the grounds urged in the writ petition would contend that the order of the appellate authority calling upon the petitioner to deposit 10% of Rs.1,41,11,633/- is one without jurisdiction and therefore, he would point out that the impugned order is in disregard to Section 107(6) of the CGST Act.

4. The counsel on record while referring to Section 107(6) of the CGST Act would contend that petitioner has challenged the entire demand confirmed in the confiscation order and therefore, he would contend that the expression "tax in dispute" provided under Section 107(6) of the CGST Act does not include interest, penalty, fine and fee. While referring to the language of Section 107(6) of the CGST Act, he would contend that deposit of 10% of the disputed tax amount means only tax amount and not entire composite amount comprising tax, fine, penalty and

fee. Therefore, he would vehemently argue and contend that the appellate authority has wrongly calculated pre-deposit of Rs.14,11,163/- which is 10% of total demand that is Rs.1,41,11,633/-. To substantiate his grounds, he has placed reliance on the judgment rendered by the High Court of Patna in the case of ***Carbon Resources (P) Limited .vs. The State of Bihar and others [Civil Writ Jurisdiction Case No.2412 0f 2023]*** as well as the judgment rendered by the High Court of Allahabad in the case of ***Durga Raj Vijay Kumar .vs. State of U.P.***[1]. Referring to these judgments, he would point out that appellate authority was not justified in including other components while determining pre-deposit namely, fine, penalty and fees. He would further point out that confiscating Officer has determined tax at Rs.6,71,983/- and

[1] 2022(66) GSTL.321 (All.)

petitioner has already deposited 10% of the tax already determined by the Enforcement Officer.

5. Per contra, learned AGA has filed statement of objections and has contended that petitioner by questioning the pre-deposit quantum is virtually seeking to defeat the provisions of the appeal by contending that while preferring an appeal under Section 107(6), 10% of the tax is to be paid and not on 10% of the disputed amount. He would point out that since petitioner is disputing the claim of the Enforcement Officer in entirety, he is bound to pay 10% on entire amount determined by the Enforcement Officer. Reliance is placed on the judgment rendered by the Apex Court in the case of ***Commissioner of Income Tax .vs. Hindustan Bulk Carriers[2].***

[2] 2003(3) SCC 57

6. Heard the learned counsel for the petitioner and the learned AGA. Perused the material on record.

7. Section 107 sub-clause(6) of the CGST Act reads as under:

> *"6. No appeal shall be filed under sub-section (1), unless the appellant has paid –*
>
> *(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as in admitted by him; and*
>
> *(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed."*

On reading clause (a) of sub-section (6) of Section 107 of the CGST Act, what emerges is that petitioner has to pay in full such part of the amount of tax, interest, fine, fee and penalty as admitted by him. The petitioner has to further pay sum equal to 10% of the remaining amount of tax in dispute arising

from the said order in terms of clause (b) of sub-section (6) of Section 107 of CGST Act.

8. Section 107(6) of the CGST Act outlines the conditions for filing an appeal mandating the appellant to fulfill certain financial obligations. Notably, the provision stipulates that the petitioner, in challenging a tax decision, is obliged to pre-deposit the entire amount admitted by him comprising tax, interest, fine, fee and penalty. In the context of disputing the entire tax amount, the 10% pre-deposit requirement pertains exclusively to the remaining disputed tax amount as articulated in the statutory language. Consequently, there exists a statutory basis for asserting that 10% pre-deposit obligation is confined to the contested tax quantum excluding penalty, fee and interest. This interpretation aligns with the legal principle that penalties are consequential to the determination of the underlining tax liability.

Therefore, when petitioner disputes the entire tax amount, the focus on the pre-deposit obligation remains on the contested tax, recognizing the subsequent nature of penalty, fee, interest in the adjudicative process. If a statute provides a thing to be done in a particular manner, then it has to be done only in that manner.

The apex court in the case of **J.K. Synthetics Lid. v. CTO**[3] has observed as follows

> *"16. It is well known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It. therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters..... Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed*

[3] (1004) 4 SCC 276

as would effectuate the object and purpose of the statute and not defeat the same.

9. The intentional exclusion of disputed interest, fine, fee, and penalty from sub-clause (b) of Section 107(6) of the CGST Act signifies a crucial legislative distinction. Analyzing this deliberate separation provides insights into the lawmaker's clear intent regarding the nature and scope of the pre-deposit obligation in appeals. In legal interpretation, statutes are construed to give effect to the legislative intent. The absence of any reference to disputed interest, fine, fee, and penalty in sub-clause (b) suggests a meticulous legislative choice. If the intention were to impose a 10% pre-deposit on these consequential elements, the legislator could have explicitly included them in sub-clause (b).

10. By isolating "a sum equal to ten per cent of the remaining amount of tax in dispute" in sub-clause (b), the legislator conveys a focused pre-deposit requirement specifically related to the disputed tax amount. This implies that the legislative design prioritizes the financial commitment associated directly with the primary tax liability being contested. This approach aligns with the legal principle that penalties, fines, fees, and interest are subsequent to the determination of tax. In essence, the legislative intent, as inferred from the wording of the provision, leans towards requiring a pre-deposit of 10% solely on the disputed tax amount, reflecting a clear understanding that these consequential elements are inherently linked to the imposition of tax and, therefore, do not warrant a separate pre-deposit under sub-clause (b).

11. The apex court in the case of ***Prakash Nath Khanna v. CIT***[4]***,*** has explained that the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency. Where the legislative intent is clear from the language, the Court should give effect to it.

12. In B. Premanand v. Mohan Koikal [2011] 4 SCC 266 the apex Court has observed as follows:

> *"32. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language."*

13. The appellate authority therefore, was not justified in calling upon the petitioner to deposit 10%

[4] (2004) 9 SCC 686

of not only tax liability, but, also fine which is imposed by the Enforcement Officer equivalent to the value of the goods. If the order passed by the appellate authority under challenge is accepted, then the condition under clause (b) giving an option to the aggrieved person who disputes the entire tax liability to deposit 10% of the remaining amount of tax in dispute would be defeated.

14. Therefore, the order under challenge is not sustainable. There is no need for the petitioner to deposit any percentage of disputed interest, fine, fee and penalty arising from the impugned order. In essence, the legislative intent as construed from Section 107(6)(b) of the CGST Act is that aggrieved party has to pre-deposit 10% of the tax liability and it does not extend to penalties, fees or interest when the petitioner has contested the entirety of the tax liability.

15. For the reasons stated supra, I proceed to pass the following:

ORDER

(i) The writ petition is allowed.

(ii) The impugned order passed by the appellate Authority calling upon the petitioner to pre-deposit 10% of Rs.1,41,11,633/- is hereby set aside.

(iii) Since petitioner has already deposited 10% of the tax liability which is to the tune of Rs.67,200/-, the appellate authority is hereby directed to admit the appeal and decide the same in accordance with law.

Sd/-
JUDGE

*alb/-