IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 7313 OF 2025 (T-RES)

BETWEEN:

SHRI. SRINIVASA SHETTY
AGED ABOUT 50 YEARS
PROPRIETOR OF
M/S.SHREE DURGA CATERERS,
SADASHIVANAGAR CLUB,
15TH CROSS, SADASHIVANAGAR,
BENGALURU – 560 080.
PRESENTLY AT : NO. 124, OUT HOUSE,
14TH 'A' CROSS,
NEAR KODANDARAMA TEMPLE,
VYALLIKAVAL,
BENGALURU – 560 003.

…PETITIONER

(BY SRI. PRAJWAL SWAMY M.,ADVOCATE)

AND:

THE COMMERCIAL TAX OFFICER
O/O. THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES,
L.G.S.T.O-130, DGSTO-1,
3RD FLOOR, BMTC BUILDING,
YASHWANTHPURA,
BENGALURU - 560 022.

…RESPONDENT

(BY SRI. HEMA KUMAR.K, AGA)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD. 30.01.2025 (ANNX-A) PASSED BY THE RESPONDENT UNDER SECTION 74 OF THE KGST/CGST ACT, 2017.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks the following reliefs:

"a. Issue a writ of certiorari, quashing the impugned order dated 30.01.2025 (Annexure-A) passed by the respondent under Section 74 of the KGST/CGST Act, 2017.

b. Issue a writ of mandamus, directing the respondent to re-determine the tax demand under Section 73 of the KGST/CGST Act, 2017.

c. Direct the respondent to allow the petitioner the benefits of the amnesty scheme u/s 128A of the CGST/KGST Act.

d. Pass such other order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Learned counsel for the petitioner has invited my attention to the material on record, in particular, the impugned order at Annexure-A in order to point out that though the same is styled as an order under Section 74 of KGST/CGST Act, 2017 (hereinafter referred to as 'the Act' for short), in reality, the said

order is passed by invoking Section 73 of KGST/CGST Act, 2017, to which Section 128A of the Act is applicable and that the petitioner would be entitled to avail the benefit of GST Amnesty Scheme and it would be necessary to set aside the impugned order and remit the matter back for reconsideration afresh in accordance with law especially when the impugned order is *exparte* without providing sufficient and reasonable opportunity to the petitioner, who is before this Court by way of the present petition.

3. Per contra, learned AGA for respondent submits that there is no merit in the petition and the same is liable to be dismissed.

4. As rightly contended by learned counsel for the petitioner, a perusal of the material on record will indicate that though the proceedings is styled as one under Section 74 of the Act, in reality/substance, the proceedings are actually under Section 73 of the Act especially having regard to the contents of the impugned order which does not contain necessary material particular/details so as to satisfy the ingredients of Section 74 of the Act but are under Section 73 of the Act.

5. It is also relevant to state that the impugned order is an *exparte* order which deserves to be set aside by providing one more opportunity to the petitioner to put forth their claim and seek benefit of GST Amnesty Scheme by treating the proceedings one under Section 73 of the Act. Under these circumstances, I deem it just and appropriate to set aside the impugned order and remit the matter back to respondent No.1 for reconsideration afresh in accordance with law.

6. In the result, I pass the following:

ORDER

i) The petition is hereby allowed.

ii) The impugned order dated 30.01.2025 (Annexure-A) passed by respondent is hereby set aside.

iii) The matter is remitted back to respondent No.1 for reconsideration afresh in accordance with law.

iv) Petitioner shall appear before respondent No.1 on 22.03.2025 without awaiting further notice.

v) Respondent shall treat the proceedings as one under Section 73(9) of the Act and pass appropriate orders on or before 26.03.2025.

vi) Immediately upon the respondent passing appropriate orders against the petitioner under Section 73(9) of the Act as stated (supra), the petitioner would be entitled to file application/requisition seeking the benefit of GST Amnesty Scheme under Section 128A of the Act, which shall be considered by respondent who shall pass appropriate orders/take appropriate decision immediately thereafter.

vii) It is made clear that this order is passed in the peculiar / special facts and circumstances of the instant case and that this order shall not be treated as a precedent nor shall the same have any precedential value for any purpose whatsoever.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

MDS
List No.: 2 Sl No.: 14