HC-KAR

NC: 2025:KHC:18771
WP No. 15596 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE B M SHYAM PRASAD

WRIT PETITION NO. 15596 OF 2025 (T-RES)

BETWEEN:

M/S V R SUNDARA MURTHY
A SOLE PROPRIETORSHIP CONCERN,
REPRESENTED HEREIN BY ITS SOLE PROPRIETOR,
MR. V R SUNDARA MURTHY HAVING
OFFICE AT NO. 12, SUNDARA NILAYA,
INFANTRY ROAD, BANGALORE 560001.

...PETITIONER

(BY SRI. SANDEEP HUILGOL.,ADVOCATE)

AND:

1. COMMERCIAL TAX OFFICER
(AUDIT) 1.2, DGSTO - 1,
BANGALORE 5TH FLOOR, BMTC BUILDING,
YESHWANTHPURA,
BANGALORE 560022.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
STATE OF KARNATAKA 1ST FLOOR,
VANIJYA THERIGE KARYALAYA
KALIDASA MARG, GANDHINAGAR,
BENGALURU 560009.

3. THE STATE OF KARNATAKA
REPRESENTED HEREIN BY THE PRINCIPAL

SECRETARY - FINANCE DEPARTMENT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA, BENGALURU - 560 001.

4. THE UNION OF INDIA
REPRESENTED HEREIN BY THE SECRETARY,
DEPARTMENT OF REVENUE, MINISTRY OF
FINANCE, NORTH BLOCK,
NEW DELHI-110001.

...RESPONDENTS

(BY SMT.JYOTHI M.M., HCGP FOR R1 TO R3;
SRI. R. MADANAN PILLAI, CGC FOR R4)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER OF ADJUDICATION DATED 28.02.2025 BEARING NO. CTO (AUDIT 1.2)/(ADJ)-1931/2024-25 PASSED BY THE 1ST RESPONDENT UNDER SECTION 73(9) READ WITH SECTIONS 75, 79, 122, 132, AND 50 OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND KARNATAKA GOODS AND SERVICES TAX ACT, 2017 READ WITH RULE 142 OF THE KARNATAKA GOODS AND SERVICES TAX RULES, 2017 FOR THE SUBJECT TAX PERIOD OF APRIL 2020 TO MARCH 2021 (ANNEXURE-A); QUASH THE IMPUGNED SUMMARY IN FORM GST DRC 07 DATED 28.02.2025 BEARING REFERENCE NO. ZD290225125382J ISSUED BY RESPONDENT NO. 1 UNDER SECTION 73 OF THE KARNATAKA GOODS AND SERVICES TAX ACT, 2017

AND THE CENTRAL GOODS AND SERVICE TAX ACT, 2017 FOR THE TAX PERIOD APRIL 2020 TO MARCH 2021 (ANNEXURE-A-1).

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

CORAM: HON'BLE MR JUSTICE B M SHYAM PRASAD

ORAL ORDER

The petitioner, who is engaged in the business of letting out commercial properties for rent and on lease, has filed this petition calling in question the first respondent's Order-of-Adjudication dated 28.02.2025 [*Annexure-A].* The first respondent's order dated 28.02.2025 is under Section 73(9) read with certain other provisions of the Karnataka Goods and Services Tax Act, 2017/the Central Goods and Services Tax Act, 2017 [for short, '*the GST Act*'] read with relevant Rules and for the tax period between 01.04.2020 and 31.03.2021. The petitioner has also called in question the summary of the Order of Adjudication dated 28.02.2025 [*Annexure-A1*] while seeking a declaration of entitlement to the benefit of Input Tax Credit [*ITC]* for a certain value.

2. The petitioner has impugned the aforesaid orders on the grounds such as that ***[a]*** the first respondent has started, conducted and completed the audit proceedings under Section 65 of the GST Act and having thus completed audit proceedings, the first respondent has also assumed jurisdiction to adjudicate under Section 73 of the GST Act, ***[b]*** this should be impermissible because adjudication will entail an examination of the merits of the audit observation, ***[c]*** the Apex Court in ***Chief Commissioner of Central Goods and Services Tax and others vs. Safari Retreats Private Limited and others***[1] has opined that the expression '*the plant or machinery*' as found in Section 17(5)(d) of the GST Act, cannot be given the same meaning as the expression '*the plant*

[1] *[2024] 167 Taxmann.com 73*

and machinery' as defined by the Explanation to Section 17, and ***[d]*** whether a building can be classified as a *'plant'* within the meaning of the expression *'the plant or machinery'* as used in Section 17(5)(d) of the GST Act is a factual question which is to be determined keeping in mind the business of the registered person and the role that the building plays in the said business.

3. Sri Sandeep Huilgol, the learned counsel for the petitioner, while emphasizing the afore grounds and asserting that the first respondent has failed to consider these aspects in concluding the Order of adjudication resulting in demand, places reliance upon the orders of this Court in W.P. No.4835/2025[2] to contend that proceedings are restored for re-consideration in very similar circumstances where the Order of adjudication was concluded without actually examining whether a

[2] *This petition is decided on 05.03.2025.*

building can be called 'a *plant*" as is mentioned under Section 17(5)(d) of the GST Act. The learned counsel submits that the petitioner has raised all these contentions in the Reply dated 26.12.2024, and notwithstanding the same, the first respondent has failed to consider these objections, and therefore, the proceedings must be restored to the first respondent for due consideration.

4. Ms. Jyothi. M. M., the learned High Court Government Pleader, and Sri R. Madanan Pillai, the learned Central Government Standing Counsel, who is on record for the fourth respondent, are heard for disposal of the petition in the light of the grounds urged. This Court must observe that it becomes imperative with the decision of the Apex Court in ***Commissioner of Central Goods and Services Tax vs. Safari Retreats Private Limited*** *supra,* it will be incumbent upon the Assessing Officer to decide whether there is cause for proceedings under Section

73 regarding a *Building* constructed for letting on lease and whether such *Building* would be within the meaning of '*a plant'* as is contemplated under Section 17(5)(d) of the GST Act. The first respondent has not considered this question at all and therefore, there must be limited interference restoring the proceedings to the first respondent with opportunity to the petitioner to file a fresh reply directing the first respondent to reconsider all grounds including the grounds on its jurisdiction to conduct the adjudicatory proceedings under Section 73 of the GST Act after completing the audit proceedings.

5. At this stage, Sri Sandeep Huilgol submits that the petitioner has already deposited 10% of the amount in demand consequent to the impugned Order-of-adjudication and that this amount may be directed to be held by the respondents subject to the conclusion of the restored proceedings. This Court opines that just observations must also be made to

ensure that there is complete adjudication. In the light of the afore, the following:

ORDER

[A] The petition is allowed in part and the impugned Order-of-adjudication dated 28.02.2025 in No. CTO (AUDIT 1.2)/(ADJ)-1931/2024-25 passed by the first respondent and the summary of the Orders dated 28.02.2025 [Annexures - A and A1] are quashed restoring the proceedings to the first respondent for reconsideration as required under ***Chief Commissioner of Central Goods and Services Tax and others vs. Safari Retreats Private Limited and others*** [*supra*] and also other grounds.

[B] The petitioner shall appear before the first respondent without further notice on 07.07.2025 and shall be at liberty to file additional replies/responses/documents and the first respondent is called upon to consider the earlier reply as also the additional reply and documents filed in terms of the liberty reserved by this Court.

Sd/-
(B M SHYAM PRASAD)
JUDGE

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