IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF MARCH, 2025

BEFORE

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

WRIT PETITION NO.29110 OF 2024 (T-RES)

BETWEEN:

SRI. MAHADEVAPPA MADAPPA
AGED ABOUT 67 YEARS,
S/O. LATE MADAPPA
RESIDING AT NO.231,
LINGAYITHA STREET,
DADAHALLI VILLAGE,
CHANDAKAVADI POST AND HOBLI
CHAMARAJANAGAR TALUK – 571 342.

…PETITIONER

(BY SMT. LAKSHMI MENON, ADVOCATE)

AND:

1. COMMERCIAL TAX OFFICER (ENFORCEMENT-10)
OFFICE OF THE JOINT COMMISSIONER
TAXES (ENFORCEMENT)
MYSORE ZONE
487, BIDARAM KRISHNAPPA ROAD
DEVARAJA MOHALLA
MYSURU – 570 001.

2. OFFICE OF THE EXECUTIVE ENGINEER
PUBLIC WORKS,
PORTS AND INLAND TRANSPORT
DEPARTMENT DIVISION
MYSURU – 570 010.
REPRESENTED BY EXECUTIVE ENGINEER.

3. OFFICE OF THE EXECUTIVE ENGINEER
PANCHAYAT RAJ ENGINEERING DIVISION
COURT ROAD, SIDDHARTHA NAGAR,
CHAMARAJANAGAR – 571 313.
REPRESENTED BY ITS
EXECUTIVE ENGINEER.

4. OFFICE OF THE EXECUTIVE ENGINEER
MINOR IRRIGATION DIVISION AND GROUND WATER
DEVELOPMENT DIVISION, NAZARBAD,
MYSURU – 570 010.
REPRESENTED BY ITS
EXECUTIVE ENGINEER.

5. OFFICE OF THE EXECUTIVE ENGINEER
CNNL KABINI CANALS DIVISION, N, NANJANGUD
1/18TH CROSS, KABIRI COLONY
NANJANGUD, MYSURU – 571 301.
REP. BY ITS EXECUTIVE ENGINEER

6. THE MANAGER
VIJAYA BANK
CHAMARAJANAGAR BRANCH
PB NO.1, AGRAHARA STREET
CHAMARAJANAGAR – 571 313

…RESPONDENTS

(BY SRI. JYOTHI M.MARADI, HCGP FOR R-1 TO R-5
R-6 SERVED BUT UNREPRESENTD)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE / QUASH THE IMPUGNED ORDER PASSED BY R-1 BEARING NO. CTO (ENF-10) / MZ11/MYS/ADJN/ORDER NO.14/2023-24 UNDER SECTION 73 OF THE KGST AND CGST ACT, 2017 ORDER DATED 28.03.2024 FOR FY 2018-19 (ANNX-A) AND ETC.

THIS PETITION, COMING ON FOR *ORDERS*, 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) To issue a writ of Certiorari or order or direction in the nature of Certiorari to set aside / quash the impugned order passed by the Respondent No.1 bearing No. CTO(ENF-10)/MZ11/MYS/ADJN/Order No.14/2023-24 under

section 73 of the KGST and CGST Act, 2017, order dated 28.03.2024, for FY 2018-19 (Annexure-A);

b) Issue Writ of Certiorari or order or direction in the nature of certiorari to set aside and quash the summary impugned order issued by Respondent no.1 bearing Reference No.ZD2903240794428 under section 73 of the KGST and CGST Act, 2017, order dated 28.03.2024, for the FY 2018-19 (Annexure-A1);

c) Alternatively, in the event the demand under section 73 of the GST Act, 2017 order dated 28.03.2024 for FY 2018-19 (Annexure-A) is not set aside in toto / or revives due to operation of law, then, issue a writ of Mandamus order or direction in the nature of Mandamus directing the Respondent no.2, 3, 4 and 5 to enter into a Supplementary Tender Agreement, or any other permissible arrangement revise the rate of applicable taxes and pay the differential GST liability imposed on the Petitioner, to the tune of Rs.9,44,112/- (CGST and KGST component) and also pay the Petitioner interest at the applicable rates and penalty to the tune of Rs.8,39,458/- and Rs.1,11,176/- respectively.

d) Issue Writ of Certiorari or order or direction in the nature of certiorari to set aside and quash the Form GST DRC – 13 dated 08.07.2024 bearing No.CTO(Enf-10) MZ-11/73 proceedings/No.07/24-25, issued by the respondent No.1 (Annexure-E); and

e) Grant any other orders that this Hon'ble Court deems fit and proper in the interest of justice."

2. Heard Smt. Lakshmi Menon, learned counsel appearing for the petitioner, Smt. Jyothi M. Maradi, learned HCGP for the respondents and perused the material on record.

3. Learned counsel appearing for the petitioner submits that the prayer that is sought is to be allowed in the light of the law laid down by this Court in the case of ***Sri.Chandrashekaraiah and others Vs. The State of Karnataka - W.P.No.9721/2019 and connected cases dated 11.04.2023***, wherein it is held as under:

"20. In the result, I pass the following:-

ORDER

(i) Petitions are hereby disposed of.

(ii) The Respondents-State and other Govt agencies / Respondents who have entered into works contract with the Petitioners are issued the following directions / guidelines:-

(a) Calculate the works executed pre-GST (prior to 01.07.2017) under KVAT regime and payments received by the Petitioners.

(b) The payments received by the Petitioners pre-GST for such of the works executed before 01.07.2017 are to be assessed under KVAT tax regime – either under COT or VAT scheme as applicable.

(c) Calculate the balance works to be completed or completed after 01.07.2017, in the original contract.

(d) Derive the rate of materials, KVAT items required or used to complete the balance works.

(e) Deduct the "KVAT" amount from those materials and the service tax, if applicable.

(f) Add the applicable "GST" on those items.

(g) Input Credit on the materials is to be arrived at and be set off as against the output GST, for those assessed under regular VAT.

(h) Further, the "tax difference" should be calculated on such balance works executed or to be executed after 01.07.2017 separately.

(i) Based on the result obtained on calculation of the tax difference on the contract value, concerned department/ authority has to decide whether agreement needs to be changed or not.

(j) A supplementary agreement may be signed with the Petitioners for the revised GST-inclusive work value for the Balance Work completed or to be completed as determined above and in case the revised GST-inclusive work value for the Balance Work, completed or to be completed after 01.07.2017, is more than the original agreement work value, the Petitioners are to be paid /reimbursed, as the case may be,

> *the differential tax amount by the concerned employer; so also, in case payments for works completed pre-GST are made post-GST, the concerned employer has to pay or reimburse, as the case may be, the differential tax amount, to the Petitioners.*

(iii) Petitioners are directed to submit comprehensive representations to the respective employers/Respondents within a period of 4 weeks from the date of receipt of a copy of this order, irrespective of whether they have completed the works pre-GST or post-GST or payments were received or yet to be received post-GST.

(iv) If such representations are submitted, the respective employers/Respondents are directed to consider and dispose of the same in the light of the aforesaid directions / guidelines as expeditiously as possible and at any rate within a period of 8 weeks from the date of submission of the representations.

(v) In view of the interim orders passed by this Court in the present petitions, such of the petitioners who had not filed their GST returns during the period after 01.07.2017 are permitted to file their returns / amended returns, pursuant to the calculation of the differential tax as per procedure above under GST regime, without insisting on interest or penalty or limitation.

(vi) The GST authorities are also directed not to take precipitative action against the Petitioners for a period of 6 months from the date of receipt of a copy of this order.

(vii) Liberty is reserved in favour of the petitioners to challenge any order / decision passed / taken by the respondents or the authorities, subsequent to this order and also take recourse to such remedies as available in law."

4. A Co-ordinate Bench of this Court in the case of ***Shri. M.G. Arunkumar Vs. The State of Karnataka and another - W.P.No.104908/2023 dated 29.08.2023*** followed the aforesaid order and allowed the petition. The Co-ordinate Bench has held as follows:

"5. It is not in dispute that the entire tender process and allocation of work by respondent/Department is post coming into force of Goods and Services Tax. If petitioner, who is a registered Civil Contractor has completed the tender work, respondent/Department being a service recipient is under bounden duty to reimburse GST amount of Rs.2,16,51,903/- in terms of Section 13 of The Central Goods and Services Tax Act, 2017. It is also not in dispute that petitioner, who is a class-I contractor having rendered service, is under

mandatory duty to pay GST amount to the department. Equally respondent/Department is under bounden duty to reimburse the GST amount. It is borne out from the records that since necessary payment at the petitioner's end the applicable GST being statutory requirement, the respondent/Department ought to have reimbursed 12% GST amount on the total work done by petitioner. Since, there is total inaction on the part of respondent/Department, this is a fit case where mandamus needs to be issued. For the reasons stated supra, I proceed to pass the following:

ORDER

i) Writ petition is allowed.

ii) The respondent is hereby directed to reimburse GST amount as indicated in the representation dated 15.04.2023 vide Annexure-E.

iii) The respondent/Department shall reimburse the said amount within a period of six weeks from the date of receipt of copy of this order."

In the light of the issue having been answered by this Court as well as a co-ordinate Bench of this Court (supra), the petition deserves to be allowed.

5. For the aforesaid reasons, the following:

ORDER

i. The petition is ***allowed*** and disposed of in terms of the aforesaid judgments of this Court in the cases of ***Chandrashekaraiah*** and ***M.G.Arun Kumar*** referred to in the body of this order.

ii. The impugned order at Annexure – A dated 28.03.2024 and Summary order at Annexure – A1 dated 28.03.2024, Notice at Annexure – E dated 08.07.2024 are hereby quashed and the concerned respondents are directed to rectify / withdraw the demand of the tax liability, interest and penalty accordingly.

iii. The concerned respondents are further directed to reimburse the GST amount and differential tax amount in terms of judgments of this Court in the cases of ***Chandrashekaraiah*** and ***M.G.Arun Kumar*** referred to in the body of this order, within a period of six weeks from the date of receipt of a copy of this order.

iv. The concerned respondents are directed to enter into the necessary Supplementary Tender Agreement and proceed further in accordance with law in terms of judgments of this Court in the cases of ***Chandrashekaraiah*** and ***M.G.Arun Kumar*** referred to in the body of this order.

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

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