HC-KAR

NC: 2025:KHC:39946
WP No. 29926 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF OCTOBER, 2025

BEFORE

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

WRIT PETITION NO. 29926 OF 2025 (T-RES)

BETWEEN:

M/S NANDI AGENCIES,
REPRESENTED BY ITS PROPRIETOR,
SHRI. KUNIGAL BASAVALINGAIAH PRABHUSHANKAR,
S/O SHRI K. C. BASAVALINGAIAH,
AGED ABOUT 58 YEARS,
HAVING OFFICE AT MADDUR ROAD,
OPPOSITE OLD LIC BUILDING,
KUNIGAL, TUMAKURU (TUMKUR) - 572 130
GSTIN: 29AHPP8168N1ZB

…PETITIONER

(BY SRI. PRANAY SHARMA Y., ADVOCATE)

AND:

1. THE COMMERCIAL TAX OFFICER
LGSTO-175, TUMKUR,
VANIJYA TERIGE SANKEERNA,
NEAR SUKRUTHA HOSPITAL,
SIDDARAMESHWARA EXTENSION,
TUMAKURU - 572 103

2. ASSISTANT COMMISSIONER OF COMMERCIAL TAX
LGSTO-175, TUMKUR,
VANIJYA TERIGE SANKEERNA,
NEAR SUKRUTHA HOSPITAL,
SIDDARAMESHWARA EXTENSION,
TUMAKURU - 572 103

3. JOINT COMMISSIONER OF COMMERCIAL TAXES
APPEALS-6,
TTMC COMPLEX, SHANTHINAGARA,
BENGALURU - 560 027

4. JOINT COMMISSIONER OF COMMERCIAL TAXES
TUMKUR,
VANIJYA TERIGE SANKEERNA,
NEAR SUKRUTHA HOSPITAL,
SIDDARAMESHWARA EXTENSION,
TUMAKURU - 572 103

...RESPONDENTS

(BY SMT. JYOTI M. MARADI, HCGP)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR DIRECTION IN THE NATURE OF A WRIT OF CERTIORARI QUASHING THE ORDER IN APPEAL PASSED UNDER SECTION 107(11) OF ACT BY THE RESPONDENT NO.3 VIDE OIA NO. GST/AP.NO.61/2024-25 DATED 27.08.2024. COPY OF THE ORDER IN APPEAL DATED 27.08.2024 IS ENCLOSED AND MARKED AS ANNEXURE-A1 AND ETC.,

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, the petitioner seeks following reliefs:

" a) Issue a writ of Certiorari or direction in the nature of a writ of certiorari quashing the Order in Appeal passed under section 107(11) of Act by the Respondent No.3 vide OIA No. GST/AP.No.61/2024-25 dated 27.08.2024. Copy of the Order In appeal dated 27.08.2024 is enclosed and marked as Annexure -A1.

b) Issue a writ of Certiorari or direction in the nature of a writ of certiorari quashing Order in Original passed under section 73(9) of the Act by the Respondent No.1 vide OIO No. CTO/LGSTO-175/TMK/Adj-165/23-

24 dated 22.12.2023. Copy of the Order In original dated 22.12.2023 is enclosed and marked as Annexure - A2.

c) *Issue a writ of Certiorari or direction in the nature of a writ of certiorari quashing the Summary of the Order in Original passed under section 73 of the Act, 2017 by the Respondent No.1 vide Reference Number ZD2912230680061 dated 22.12.2023. Copy of the Summary of the Order In original in DRC-07 dated 22.12.2023 is enclosed and marked as Annexure - A3.*

d) *Issue a writ of Certiorari or direction in the nature of a writ of certiorari quashing the Show cause notice issued by the Respondent No.1 dated 27.09.2023 bearing Office No. CTO/LGSTO-175/TMK/DRC-01/1B-50/23-24 issued under section 73(1) for the tax periods 2017-2018 of the Act. Copy of the show cause notice dated 27.09.2023 issued under section 73(1) of the KGST Act, 2017 is enclosed and marked as Annexure - A4.*

e) *Issue a writ of Certiorari or direction in the nature of a writ of certiorari quashing the summary of the Order in Form GST DRC-01 dated 27.09.2023 issued by the Respondent No.1 bearing. Reference No. ZD2909230472727. Copy of the Summary of the Order in Form GST DRC-01 dated 27.09.2023 is enclosed and marked as Annexure - A5.*

f) *Issue a writ of Certiorari or direction in the nature of a writ of certiorari quashing the DRC-01A issued by the*

Respondent No.1 under section 73(5) of Act for the tax period 2017-2018 dated 01.09.2023 vide Office No. ACCT/LGSTO-175/DRC-01A/1B-50/23-24. Copy of the DRC-01A dated 01.09.2023 issued under section 73(5) of the KGST Act, 2017 dated 01.09.2023 is enclosed and marked as Annexure - A6.

g) Issue a writ of Certiorari or direction in the nature of a writ of certiorari quashing the DRC-01A issued by the Respondent No.1 under section 73(5) of Act for the tax period 2017-2018 dated 04.09.2023 vide Reference No. ZD290923003524E. Copy of the Copy of the DRC-01A dated 04.09.2023 issued under section 73(5) of the KGST Act, 2017 dated 04.09.2023 is enclosed and marked as Annexure - A7.

h) And pass such other orders as this Hon'ble Court deems fit and proper in the interest of justice and equity."

2. Heard learned counsel for the petitioner and learned HCGP for the respondents and perused the material on record.

3. A perusal of material on record will indicate that pursuant to intimation in Form DRC-01A dated 01.09.2023, the petitioner filed its reply dated 12.09.2023. Subsequently, the respondent No.1 issued a show-cause notice dated 27.09.2023 under Section 73 of the CGST/KGST Act, 2017 alleging that there

was a difference in availment of ITC between GSTR-3B and GSTR-1. Since the petitioner did not submit his reply to the said show-cause notice also, the respondent No.1 proceeded to pass the impugned order dated 22.12.2023 under Section 73(9) of the KGST/CGST Act, 2017 confirming the total demand of Rs.6,59,729/- including the tax, interest and penalty.

4. Pursuant to the said order, the petitioner filed an appeal on 11.04.2024 and the said appeal was dismissed on merits by respondent No.3 after hearing the petitioner. It is submitted that since the GST Appellate Tribunal has not been constituted as on today, the petitioner has no option but to approach this Court by way of the present petition *interalia* contending that the inability and omission on the part of the petitioner to submit a reply to the show-cause notice and contest the proceedings was due to bonafide reasons, unavoidable circumstances and sufficient cause and submits that if one more opportunity is provided, by setting aside the impugned order, the petitioner would submit a reply to the show-cause notice and contest the proceedings.

5. Learned counsel for the petitioner submits that the intimation notice was uploaded under the head "View Notices and Order", whereas the Show Cause Notice was uploaded under the head "View Additional Notices Tab" in the GST Portal. Since the respondents uploaded the Show Cause Notice under different head and the same were not brought to the notice of the Petitioner, the petitioner couldn't submit replies/ documents to the show-cause notice under section 73(1) of the CGST/KGST Act, 2017. Pursuant to the adjudication order and appeal order being passed by the respondents, the petitioner with no option has approached this Court by way of the present petition *interalia* contending that the inability and omission on the part of the petitioner to submit a reply to the show-cause notice was due to bonafide reasons, unavoidable circumstances and sufficient cause and submits that if one more opportunity is provided by setting aside the impugned order, the petitioner would submit a reply to the show-cause notice and contest the proceedings.

5. Learned counsel for the petitioner on instructions submits that in the event the impugned order is set aside and the matter is remitted back to the respondent No.1 for reconsideration

afresh in accordance with law, the petitioner would contest the proceedings on all grounds except the ground of limitation which has been expressly/ consciously given up for the purpose of the present order.

6. Per contra, learned HCGP for the respondents submits that since the show-cause notice was duly communicated electronically to the petitioner by uploading the same on GST portal as well as e-mail, the petitioner cannot complain that he was not aware of impugned notice and as such, there is no merit in the petition and the same is liable to be dismissed.

7. Though several contentions have been urged by both sides as regards to the petitioner not having noticed show-cause notice and his inability and omission to reply to the said show cause notice, is a matter of record and an undisputed fact that the petitioner did not submit his reply to the show-cause notice, which culminated in the impugned ex-parte order.

8. Under these circumstances, having regard to the specific assertion on the part of the petitioner that his inability and omission to submit replies and contest the proceedings was due to

bonafide reasons, unavoidable circumstances and sufficient cause, I deem it just and appropriate to adopt a justice oriented approach and provide one more opportunity to the petitioner by setting aside the impugned order dated 22.12.2023 as well as order 27.08.2024 and remitting the matter back to the respondent No.1 for reconsideration of the matter afresh in accordance with law from the stage of petitioner submitting reply to the impugned show-cause notice subject to the condition that the petitioner shall not raise the ground of limitation which has been expressly/ consciously given up for the purpose of the present order.

9. In the result, I pass the following:

ORDER

(i) The petition is hereby allowed.

(ii) The impugned order-in-appeal dated 27.08.2024 issued by the respondent No.3 under Section 107(11) of the CGST/KGST Act, 2017 at Annexures – A1 passed by respondent No.3, impugned order in original 22.12.2023 under Section 79(9) of the Act at Annexure-A2 issued by respondent No.1 are hereby set aside.

(iii) The matter is remitted back to the respondent No.1 for reconsideration afresh in accordance with law from the stage of petitioner submitting its reply to the show cause notice dated 27.09.2023 issued under Section 73(1) of the CGST/KGST Act, 2017 at Annexure – A4.

(iv) The petitioner is directed to appear before the respondent No.1 on 11.11.2025 without awaiting further notice from the respondent No.1.

(v) Liberty is reserved in favour of the petitioner to submit replies, pleadings, documents etc., which shall be considered by the respondent No.1 who shall provide sufficient and reasonable opportunity to the petitioner and hear them and proceed further in accordance with law.

(vi) In the event, the Petitioner does not appear before the respondent No.1 on 11.11.2025 as stated supra, present order shall stand automatically recalled without further orders.

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

MDS
List No.: 2 Sl No.: 66