HC-KAR

NC: 2026:KHC:59910-DB
WA No. 1528 of 2026

CNR: KAHC010374622026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

WRIT APPEAL NO. 1528 OF 2026 (T-RES)

BETWEEN:

1. THE STATE OF KARNATAKA
   THE JOINT COMMISSIONER OF COMMERCIAL TAXES
   (APPEALS) 05, SHANITHANGAR
   BENGALURU - 560 027

2. THE ASSISTANT COMMISSIONER OF
   COMMERCIAL TAXES, (LGSTO)-038
   BENGALORE
   NO.58, SECOND FLOOR
   HAL 2ND STAGE, 100 FEET ROAD
   INDIRANAGAR
   BENGALURU - 560 038

…APPELLANTS

(BY SRI ADITYA VIKRAM BHAT, AGA)

Digitally signed by AMBIKA H B
Location: High Court of Karnataka

AND:

1. M/S ITD CEMINDIA JV
   AN ASSOCIATION OF PERSONS REPRESENTED
   BY ITS POWER OF ATTORNEY HOLDER
   SRI THOMAS K.D.
   S/O SRI K.M. DEVASIA
   AGED ABOUT 53 YEARS
   SY NO.25-26, NEAR KANEKAL CROSS
   OPP ITC BISCUIT COMPANY
   SOUKYA ROAD, JADIGENAHALLI HOBLI

KACHARKANAHALLI, HOSKOTE
BENGALURU - 560 067

…RESPONDENT

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO ALLOW THE WRIT APPEAL AND SET ASIDE THE JUDGEMENT AND ORDER DATED 12/03/2025 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT IN W.P.NO.2817/2025.

THIS APPEAL, COMING ON FOR PRELIMINARY HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The Revenue has filed the present appeal impugning an order dated 12.03.2025 passed by the learned Single Judge [**impugned order**] in Writ Petition No.2817/2025 (T-RES).

2. The present appeal has been filed after an inordinate delay of 402 days. The Revenue has also filed an application seeking condonation of delay along with the supporting affidavit setting out the reasons for the delay. It is stated that the certified copy of the judgment was delivered on 05.04.2025 and it was thereafter put up to the Assistant Commissioner, Commercial Taxes for perusal on

05.12.2025. There is no explanation why the said judgment was not even placed before the concerned officer for more than ten months after the copy was available with the Department. It was thereafter put up before various other authorities and the concerned officers sent a letter dated 12.12.2025 seeking legal opinion of the Government Advocate whether to file an appeal. It is stated that the said opinion of the law office was forwarded to the legal cell on 05.03.2026. This opinion was thereafter communicated by the Under Secretary, CT-1 to the concerned authority on 13.03.2026 and thereafter, on 17.03.2026, the concerned authority sent a letter to the Assistant Commissioner for seeking authorisation to file an appeal.

3. The copy of the Government Order dated 25.03.2026 was received by the office of the Advocate General and the entire file of the writ petition was placed before the concerned law officer. The writ appeal was finalised and filed on 05.06.2026.

4. As it is apparent from the above, the delay in filing the appeal exceeds the reasonable period and there are no grounds to justify that the appellant was prevented to file the appeal within the

stipulated period. We find no grounds to countenance such a delay.

5. Having stated the above, we have also briefly examined the appeal on merits.

6. The respondent (writ petitioner) is a joint venture between ITD Cementation India Limited and Italian-Thai Development Public Company Limited. The respondent was awarded a contract by the Bengaluru Metro Rail Corporation Limited [**BMRCL**] for construction of elevated structures, including viaduct and stations on 15.05.2017. Admittedly, the activities performed were covered under Notification No.11/2017–Central Tax (Rate) dated 28.06.2017 at serial No.3(ii) being "composite supply of works contract as defined in clause 119 of Section 2 of CGST Act, 2017". The said supply was chargeable to Central Goods and Services Tax at the rate of 9% and the Karnataka Goods and Services Tax at the rate of 9%. Thus, in aggregate, GST was payable on the said supply at the rate of 18%.

7. Subsequently, by a notification dated 22.08.2017[1], Serial No.3(iii) of Notification No.11/2017 was substituted. The respondent's activities were covered under serial No.3(v)(a) of the said notification, which attracted GST at the rate of 12% (6% CGST and 6% SGST), but supply pertaining to railways, including monorail and metro was not covered. Thereafter, by Notification No.1/2018-Central Tax (Rate) dated 25.01.2018, the benefit of the lower rate of GST for composite supply of works contract services was extended to supply pertaining to railways, excluding monorail and metro. Thus, the respondent was liable to pay GST at the rate of 12%. However, most of the inputs such as cement, steel, HDPE pipes, etc., which were required for rendering the works contract services, carried higher GST rates of 18% and 28%. In view of the inverted tax structure, the respondent could not avail the benefit of the entire input tax credit [**ITC**] on goods and services.

8. The respondent claimed that it was entitled to refund of unutilised ITC under Section 54(3) of the Central Goods and Services Tax Act, 2017 [**CGST Act**]. According to the respondent,

[1] Notification No.2017 Central (Rate)

it's case fell within the scope of clause (ii) of Section 54(3) of the CGST Act. Sub-section (3) of Section 54 reads as under:

> "(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:
>
> **Provided** that no refund of unutilised input tax credit shall be allowed in cases other than –
>
> (i) zero-rated supplies made without payment of tax;
>
> (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than *nil* rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:
>
> **Provided also** that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies."

9. The respondent applied for refund of unutilized input tax credit aggregating to ₹3,11,86,340/- for the tax period May 2020. The Assistant Commissioner [**the Adjudicating Authority**] issued a notice of rejection in Form GST-RFD-08 on 19.06.2022. According to the Adjudicating Authority, in terms of Notification No.15/2017 Central Tax (Rate) dated 28.06.2017, refund of unutilized input tax credit was not permissible in case of supply of

service specified in Sub-item (b) of Item 5 of Schedule II of the CGST Act. The reason proposing to reject the respondent's claim as set out in the said notice is reproduced below:

> "**As per Notification No.15/2017-Central Tax (Rate) Dated 28-06-2017 (W.E.F 01/07/2017)**, No refund of unutilized input tax credit shall be allowed under sub-section (3) of section 54 of the said Credit Goods and Services Tax Act, in case of supply of services specified in sub-item (b) of item 5 of Schedule II of the Central Goods and Services Tax Act. Therefore you are not eligible to claim Refund on account of ITC accumulated due to Inverted Tax Structure, since outward supply falls under Sub-item (b) of item 5 of Schedule II of the Central/State Goods and Services Tax Act-2017. Therefore above mentioned refund application is liable to be rejected."
>
> [emphasis added]

10. The respondent filed its submissions in the prescribed form contesting the said notice of rejection. The respondent disputed that its services fell under Sub-item (b) of Item 5 of Schedule II. It claimed that its services were covered under the expression "composite supply" under Item 6 of Schedule II to the CGST Act as the same were covered within the meaning of "works contract" as defined under clause 119 of Section 2 of the CGST Act.

11. The Adjudicating Authority rejected the respondent's application for refund by an order in original dated 02.10.2022. The

respondent filed an appeal under Section 107 against the order in original dated 02.10.2022 before the Appellate Authority. The Appellate Authority dismissed the said appeal by an order dated 24.04.2024 holding that the supply made by the respondent fell under Sub-item (b) of Item 5 of Schedule II of the CGST Act and not Item 6 as claimed by the respondent.

12. The respondent assailed the said order by filing a writ petition, which was allowed by the impugned order. The learned Single Judge had referred to an earlier order dated 28.08.2024 passed in Writ Petition No.2490/2023, whereby it was held that Notification No.15/2023 dated 19.10.2023 clarified that the refund of unutilised ITC was not permissible only in relation to construction activity for the purpose of sale in the real estate sector. The said notification had substituted Notification No.15/2017 dated 28.06.2017 whereby the Central Government had notified that there shall be no refund of unutilised ITC in case of supply of services of construction of complex, building or a part thereof intended for sale to a buyer, wholly or partly, where the amount

charged from the recipient of the service includes the value of land or undivided share of land, as the case may be.

13. The learned counsel appearing for the Revenue contended that the supply made by the respondent could not be accepted as "composite supply" without examining the relevant facts. He submitted that the copy of the contract between the parties and the respondent was not examined and, therefore, it could not be ascertained whether the services rendered merely constituted a supply of construction services or a works contract service, which would be a composite supply.

14. We note that the averments made in the present appeal are somewhat at variance with the aforesaid argument. It is the Revenue's case in the present appeal that the learned Single Judge has erred by holding that the works contract services rendered by the respondent do not fall within the scope of Sub-item (b) of Item 5 of Schedule II of the CGST Act. There is no dispute that the respondent renders works contract services.

15. It may be relevant to refer to Items 5 and 6 of Schedule II of CGST Act. The same are reproduced below:

> "**5. Supply of Services**: The following shall be treated as supply of services namely:-
>
> (a) xxxxxxxxxxxx
>
> (b) Construction of a complex, building, civil structure or a part thereof, including the complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required by the competent authority or after its first occupation, whichever is earlier…..
> `
>
> **6. Composite supply**: The following composite supplies shall be treated as supply of services namely:-
> (a) Works contract as defined in clause (119) of Section 2;
> (b) xxxx"

16. The term "works contract" is defined under Section (2) 119 of CGST Act as under:

> "Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract."

17. We note that there is no dispute that the activities of the respondent are covered under the definition of the term "works

contract". Neither the order passed by the Adjudicating Authority nor the Appellate Authority disputes the respondent's claim that the supply made by the respondent is covered under works contract. The averments made in the present appeal also do not dispute the same.

18. We may also refer to paragraph 9 of the order passed by the Appellate Authority which expressly records that the respondent undertakes contract services. The opening sentence of paragraph 9 of the order passed by the appellate authority is set out below:

> "Perusal of records shows appellant undertaken works contract services for construction of metro stations of Bangalore Metro Rail Corporation Ltd., ('BMRCL')"

19. In view of the above, we are unable to accept that there is any doubt that the respondent is engaged in providing composite supplies as covered under Item 6 of Schedule II to CGST Act .

20. We concur with the view of the learned Single Judge that the respondent's claim for refund could not be denied on the ground that its services fell within the scope of clause (b) of Item 5 of Schedule II of the CGST Act.

21. In view of the above, the appeal is dismissed on merits as well as on account of delay.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

AHB
List No.: 2 Sl No.: 33