IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2024

BEFORE

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

WRIT PETITION NO. 23486 OF 2024 (T-RES)

BETWEEN:

M/S EMMAR PROJECT CONTRACTORS INDIA (P) LIMITED
ANNAPOORNA, D NO.3 KULKI,
MANGALORE – 575 001.
REP BY ITS MANAGING DIRECTOR
M R PRAKASH
GST TIN: 29AACC4658IZQ
NOW CLOSED HAVING OFFICE AT
VASANTHAM KANNOTH ROAD,
MUPPATHADAM POST, ALUVA
KERALA - 683 110.

...PETITIONER

(BY SMT. VANAJA M R.,ADVOCATE)

AND:

1. THE ASST. COMMISSIONER OF COMMERCIAL TAXES,
LGSTO - 260, GROUND FLOOR,
VANIJYA THERIGE BHAVAN, MAIDEN ROAD,
MANGALORE.

2. GOODS AND SERVICES TAX COUNCIL
REP HEREIN BY THE CHAIRPERSON
5TH FLOOR, TOWER II, JEEVAN BHARTI BUILDING,
JANPATH ROAD, CONNAUGHT PLACE,
NEW DELHI - 110 001.

3. CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
REP HEREIN BY THE CHAIRMAN,
DEPT OF REVENUE,
MINISTRY OF FINANCE, GOVT OF INDIA,
NORTH BLOCK, NEW DELHI- 110 001.

4. THE STATE OF KARNATAKA
REPT. HEREIN BY THE PRINCIPAL SEC.- FINANCE
DEPT OF MINISTRY OF FINANCE,
GOVT OF KARNATAKA,
VIDHANA SOUDHA,
BENGALURU - 560 001.

...RESPONDENTS

(BY SRI. HEMA KUMAR., AGA FOR R1 & R4;
SRI. AKASH B SHETTY., ADVOCATE FOR R2 & R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO (1) ISSUE A WRIT OF CERTIORARI OR A DIRECTION IN THE NATURE OF WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR ORDER QUASHING THE RECOVERY NOTICE ISSUED U/S 73 OF THE KGST ACT UNDER REFERENCE NO.ZD2903240866341D FOR THE PERIOD APR2018- MAR 2019 DATED 30/03/2024(ANNEXURE-F) and etc,

THIS WRIT 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 for the following reliefs:-

*"(i) Issue a Writ of Certiorari or a direction in the nature of writ of certiorari or any other appropriate writ or order quashing the recovery Notice issued u/s 73 of the KGST Act Under reference No.ZD2903240866341D for the period APR 2018- MAR 2019 dated 30/03/2024**(ANNEXURE-F)***

(ii) Issue a Writ of Certiorari or any other appropriate writ or order quashing the Assessment order passed by the 1st Respondent bearing No. CTO/LGSTO-260/77/2023-24- dated 30/03/2024 rejecting the claim of input credit of Rs.35,3900/- and directing to pay once again the sum of Rs.35,3900 with interest of 319218 and levy of penalty of

*Rs.40000 in total Rs.71,3118/- on the ground the same is filed after the time limit permitted under section 16(4) of the CGST/KGST Act 2017. The input tax claimed in these returns aggregating to RS.35,3900/- is in admissible **ANNEXURE-"G";***

*(iii) Issue a Writ of Certiorari or any other appropriate writ or order quashing the notice passed by the 1st Respondent in Form GST.ASM10.NO.ACCT/LGSTO/-260/ASMT-10(2021-2)/71/20-21 dated 04.01.2022 rejecting the input credit benefits and calling for reply**(Annexure-B);***

*(iv) Issue a writ of mandamus or any other appropriate writ or order directing the 1st Respondent to allow the Petitioner to claim the input tax credit benefit of Rs. 3,35,900/- for April 2018 March 2019- and Rs. 4,01,953./-- For The April 19-Jan & 20- March 20 and 2019-20 for the Asst Year 2019-20 which he is entitled to as per the return filed by him GSTR-3B on 20/02/2020 and 08/03/2021(**Annexure-B & D)***

v) Grant such other orders of directions deemed fit in the circumstances of the case and in the interests of justice."

2. Heard learned counsel for the petitioner and learned counsel for the revenue and learned AGA for the State and perused the material on record.

3. A perusal of the material on record will indicate that the issue in controversy involved in the present petition is directly and squarely covered by the judgment of this Court in the case of ***M/s.Sadhana Enviro Engineering Services vs. Joint Commissioner of Central Tax & others – W.P.No.6138/2020 dated 03.09.2024,*** which reads as under:-

> *2. Heard learned Senior counsel for the petitioner and learned counsel for the respondents – revenue and learned AGA for the State and perused the material on record.*
>
> *3. Learned Senior counsel for the petitioner submitted that though several contentions have been urged by the petitioner who has also sought for various reliefs, during the pendency of the present petition, a new provision i.e., Section 16(5) has been inserted by "The Finance (No.2) Act, 2024" vide Central Act 15 of 2024, in which, Clause No.118 provides for condonation of delay in availment of credit and extended the time limit by providing that for supplies pertaining to the financial years 2017-18, 2018-19, 2019-20 and 2020-21, the petitioner would be entitled to avail / claim credit in any return filed up to 30.11.2021. It is submitted that the said "The Finance (No.2) Act, 2024" received presidential asset on 16.08.2024 and would be notified shortly. It was further submitted that in cases where assessees had paid amounts as pre-deposit under court orders or in appeal proceedings or amounts recovered by the respondents –*

revenue are paid by the assessees pursuant to recovery proceedings, the embargo contained in Clause 150 of the said "The Finance (No.2) Act, 2024" would not apply and was not applicable to the assessees, who would not be covered by the said embargo and consequently, they would be entitled to refund of the said amounts. It is therefore submitted that without going into the various other contentions urged by the petitioner and reliefs sought for by it and without expressing any opinion on the same, the present petition may be disposed of with a direction to consider and implement and give effect to the amended provisions contained in Section 118 of "The Finance (No.2) Act, 2024" relating to insertion of Section 16(5) to the CGST Act / KGST Act within a stipulated time frame.

4. Per contra, learned counsel for the respondents – revenue and learned AGA for the respondents – State jointly and fairly submit that it is true that Section 16(5) was inserted vide Clause 118 of "The Finance (No.2) Act, 2024" and that the same was applicable to the petitioner and other assessees and the time for filing returns and availing input tax credit would stand extended upto 30.11.2021. It is also submitted that since presidential asset has already been received to "The Finance (No.2) Act, 2024", necessary Notification would be issued shortly and as such, the present petition may be disposed of accordingly.

5. As rightly contended by the learned Senior counsel for the petitioner as well as learned counsel for the respondents – revenue and learned AGA for the State, Section 16(5) was inserted into the CGST Act vide Clause

118 of the "The Finance (No.2) Act, 2024", which reads as under:-

> *"118. In Section 16 of the Central Goods and Services Act, with effect from the 1st day of July, 2017, after sub-section(4), the following sub-sections shall be inserted, namely:-*
>
> *(5) Notwithstanding anything contained in sub-section(4), in respect of an Invoice or Debit note for supply of goods or services or both pertaining to the financial years, 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under Section 39 which is filed up to the thirtieth day of November, 2021.*
>
> *(6) xxxxxxxxxxxxx*
>
> *(i) xxxxxxxxxxxxxx*
>
> *(ii)xxxxxxxxxxxxxx "*

6. In view of the aforesaid amendment by inserting Section 16(5) to the CGST / KGST Act, the present petition deserves to be disposed of relegating the parties to the original authority to implement and give effect to the said provisions after providing sufficient and reasonable opportunity to the petitioner and hearing them and proceed further in accordance with law and by issuing certain directions in this regard.

7. In the result, I pass the following:-

ORDER

(i) Petition is hereby disposed of.

(ii) The parties are relegated to the stage of show cause notice at Annexure-C dated 13.02.2020 issued by the respondent(s) and the respondents are directed to give effect to and implement the amended

provisions contained in Section 118 of "The Finance (No.2) Act, 2024" relating to insertion of Section 16(5) to the CGST Act / KGST Act by providing sufficient and reasonable opportunity and hear the petitioner and proceed further in accordance with law within a period of one month from the date of receipt of a copy of this order.

(iii) The impugned blocking of the Input Tax Credit (ITC) ledger of the petitioner vide Annexure-F dated 03.02.2020 is hereby quashed.

(iv) The respondents are directed to unblock and release the credit balance of the petitioner in their ITC Ledger / Account, if not already released, immediately / forthwith upon receipt of a copy of this order without any delay.

(v) All rival contentions on all other prayers sought for by the petitioner including the challenge to the statutory provisions are kept open and no opinion is expressed on the same.

4. In view of the aforesaid facts and circumstances and the judgment of this Court in ***M/s.Sadhana Enviro Engineering's case supra,*** I am of the view that the present petition also deserves to be allowed and disposed of in terms of the said judgment.

5. In the result, I pass the following:-

ORDER

(i) Petition is hereby disposed of in terms of the judgment of this Court in the case of ***M/s.Sadhana Enviro Engineering***

Services vs. Joint Commissioner of Central Tax & others – W.P.No.6138/2020 dated 03.09.2024.

(ii) The impugned Order at Annexure-G dated 30.03.2024 is hereby quashed.

(iii) The parties are relegated to the stage of show cause notice dated 30.01.2024 issued by the respondent(s) and the respondents are directed to give effect to and implement the amended provisions contained in Section 118 of "The Finance (No.2) Act, 2024" relating to insertion of Section 16(5) to the CGST Act / KGST Act by providing sufficient and reasonable opportunity and hear the petitioner and proceed further in accordance with law within a period of one month from the date of receipt of a copy of this order.

(iv) All rival contentions on all other prayers sought for by the petitioner including the challenge to the statutory provisions are kept open and no opinion is expressed on the same.

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

MDS: List No.: 1 Sl No.: 5