



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF APRIL, 2024

BEFORE

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

WRIT PETITION NO.6795 OF 2024 (T-RES)

BETWEEN:

CULTGEAR PRIVATE LIMITED
(COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956)
NO.7 AND 17C BDA,
SECTOR 3, HSR LAYOUT,
BENGALURU - 560 102.

BY ITS AUTHORIZED SIGNATORY
SIVARAM NARAYANAN
S/O VENKATARAMAN NARAYANAN
AGED 39 YEARS
RESIDING AT 76 AND 77/15-1
7TH MAN, RAMANJANEYA NAGAR
CHIKKALASANDRA
SUBRAMANYAPURA
BANGALORE SOUTH - 560 061.

...PETITIONER

(BY SMT. DISHA, ADVOCATE FOR
SRI. P.B. HARISH, ADVOCATE)

AND:

COMMERCIAL TAX OFFICER
(ENF)53, SOUTH ZONE
BENGALURU
VTK BUILDING
KORAMANGALA
BENGALURU - 560 047.

...RESPONDENT

(BY SRI. HEMA KUMAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED
ORDER GST AP 04/23-24 DATED 16TH SEPTEMBER, 2023 LD. JOINT





COMMISSIONER OF COMMERCIAL TAXES APPEALS-4 SHANTHINAGAR BENGALURU ATTACHED HEREWITH AS ANNEXURE-B PASSED IN CONFIRMATION OF ORDER DATED 17.03.2023 NO. ADCOM/ENF/CTO-53/MOV-2/NO. 23/2022-23 (ANNEXURE-C) PASSED BY THE RESPONDENT /COMMERCIAL TAX OFFICER (ENF) 53 SOUTH ZONE, BANGALORE.

THIS PETITION, COMING ON FOR *ORDERS*, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In this petition, petitioner seeks the following reliefs:

- I. To issue writ of mandamus and/or any other appropriate writ(s) directing the Respondent to withdraw recovery proceedings by issuing a demand draft equivalent to the Bank Guarantee of Rs. 11,21,840/- as on 1 February 2024 (Annexure A).*
- II. To issue writ of certiorari setting aside the impugned order GST.AP.04/23-24 dated 16 September 2023 Ld. Joint Commissioner of Commercial Taxes, Appeals-4, Shanthinagar, Bengaluru attached herewith as Annexure B passed in confirmation of order dated 17 March 2023 No.ADCOM/ENF/CTO-53/MOV-2/NO.23/2022-23 (Annexure C) passed by Respondent/ Commercial Tax Officer, (Enf)-53, South Zone, Bangalore.*
- III. To issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice.*
- IV. To award cost of this petition.*



V. *Pass any other order or give any other direction as this Hon'ble Court deems fit and appropriate in the circumstances of the case."*

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

3. In addition to reiterating the various contentions urged in this petition and referring to the material on record, learned counsel for the petitioner submits that petitioner is not in a position to prefer an appeal against the impugned order dated 16.09.2023 since the appellate tribunal, GSTAT has not been constituted so far. It is submitted that as and when the GSTAT is constituted, the petitioner would challenge the impugned order by filing a statutory appeal which may be permitted by this court. Learned counsel for the petitioner also submits that the respondent may be directed to refund a sum of Rs.11,21,840/- back to the petitioner, who would furnish/issue a fresh bank guarantee in favour of the respondent within a period of one week from the date of refund. Therefore, he submits that the present petition may be disposed of incorporating the aforesaid terms and conditions.



4. Per contra, learned AGA, adverting the circular dated 18.03.2020, in order to point out that the respondent has subsequently stated the limitation to prefer the appeal would arise only after constitution of the GSTAT and appointment of the president to the GSTAT. Hence, no prejudice would be caused to the petitioner if they are permitted to prefer a statutory appeal after constitution of GSTAT. He also submitted that subject to the condition that the petitioner would furnish a bank guarantee within a period of one week from the date of refund, the respondent shall refund a sum of Rs.11,21,840/- back to the petitioner as directed by this court.

5. The Circular dated 18.03.2020 reads as under:

“Various representations have been received wherein the issue has been decided against the registered person by the adjudicating authority or refund application has been rejected by the appropriate authority and appeal against the said order is pending before the appellate authority. It has been gathered that the appellate process is being kept pending by several appellate authorities on the grounds that the appellate tribunal has been not constituted and that till such time no remedy is available against their Order-in-Appeal, such appeals cannot be disposed. Doubts have been raised across the field formations in respect of the appropriate procedure to be followed in absence of appellate tribunal for appeal to be made under section 112 of the Central Goods



and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”).

2. The matter has been examined in detail. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarifications and guidelines.

3.1 Appeal against an adjudicating authority is to be made as per the provisions of Section 107 of the CGST Act. The sub-section (1) of the section reads as follows: -

“107. (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.”

3.2 Relevant rules have been prescribed for implementation of the above Section. The relevant rule for the same is rule 109A of Central Goods and Services Tax Rules, 2017 which reads as follows

“109A. Appointment of Appellate Authority.- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –



(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent,

within three months from the date on which the said decision or order is communicated to such person.”

3.3 Hence, if the order has been passed by Deputy or Assistant Commissioner or Superintendent, appeal has to be made to the appellate authority appointed who would not be an officer below the rank of Joint Commissioner. Further, if the order has been passed by Additional or Joint Commissioner, appeal has to be made to the Commissioner (Appeal) appointed for the same.

4.1 The appeal against the order passed by appellate authority under Section 107 of the CGST Act lies with appellate tribunal. Relevant provisions for the same is mentioned in the Section 112 of the CGST Act which reads as follows: -

“112(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal Page 3 of 3 against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.”



4.2 The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued **the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019**. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.

4.3 Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.”



7. In view of the aforesaid facts and circumstances, I deem it just and appropriate to dispose of this petition by directing the respondent to refund the aforesaid amount of Rs.11,21,840/- encashed by the respondent on 01.02.2024 within a period of one month from today. It is further directed that immediately upon the respondent refunding the aforesaid amount back to the petitioner, petitioner would furnish a fresh bank guarantee within a period of one week thereafter which would be valid for a period of one year. Liberty is reserved in favour of the petitioner to prefer a statutory appeal challenging the impugned order upon constitution of the GSTAT and within the extended period of limitation as stipulated in the circular dated 18.03.2020.

Subject to the aforesaid directions, petition stands ***disposed off.***

**Sd/-
JUDGE**