



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 7295 OF 2024 (T-RES)

BETWEEN:

1. R.S. MARKETING AND LOGISTICS
PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT 2013,
REPRESENTED BY SHRI RANDEEP SACHDEVA,
S/O SHRI. INDER SINGH SACHDEVA,
AGED 60 YEARS,
MANAGING DIRECTOR AND
AUTHORIZED SIGNATORY,
HAVING OFFICE AT NO.1137,
11TH CROSS, WEST OF CHORD ROAD,
2ND STAGE, MAHALAKSHMIPURAM,
BENGALURU-560 086

... PETITIONER

(BY SRI. PRADYUMNA HEJIB., ADVOCATE)

AND:

1. THE COMMERCIAL TAX OFFICER
LGSTRO-51
DGSTO-6,
BENGALURU-560 098

... RESPONDENT

(BY SRI. HEMA KUMAR, AGA)





THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH IMPUGNED ORDER OF ADJUDICATION BEARING REFERENCE NO. CTO/LGSTO-51/LR/D&R-04/2023-24 DATED 02/05/2023 PASSED BY THE RESPONDENT (ANNEXURE-A) PASSED AND ISSUED BY THE RESPONDENT AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner has filed the present petition seeking for setting aside of the order of adjudication bearing Reference No. CTO/LGSTO-51/LR/D&R-04/2023-24 dated 02.05.2023 passed by the respondent, copy of which is produced at Annexure-A.

2. It is the case of the petitioner that there were certain discrepancies between the ITC claimed as per GSTR-3B and GSTR-2A and noticing such discrepancies, the Authority has adjudicated and directed excess claim of ITC to be reversed.

3. It is the case of the petitioner that they were not given sufficient opportunity to explain the discrepancies. However, it is submitted that irrespective of



the stand taken by the assessee, in light of the Circular No.183/15/2022-GST dated 27.12.2022 issued by the Central Board of Indirect Taxes and Customs, GST Policy Wing, wherever there is discrepancy in GSTR-3B and GSTR-2A, procedure is prescribed and in terms of the said procedure, the adjudicating authority ought to have followed the said procedure and non-following of such procedure has caused prejudice and accordingly, it is submitted that the matter may be remitted back for fresh consideration to the Authority, taking note of the Circular referred to above.

4. Sri. K. Hemakumar, learned Additional Government Advocate appearing for the Revenue submits that despite the reasonable opportunity being granted, the same has not been availed as is clear from the impugned order. It is further submitted that insofar as the Circular relied upon by the petitioner, the same was not relied upon in the adjudication proceedings.

5. Heard both sides.



6. For the limited purpose of the present matter, it is to be noticed that the table enclosed in the adjudication order would indicate that there is discrepancy between the ITC claimed as per GSTR-3B and GSTR-2A. The Authority has disallowed such claim only on the ground of discrepancy. It must be noticed that Circular No.183/15/2022-GST dated 27.12.2022 is made applicable specifically with respect to the financial year 2017-18 as is the case herein. It is further to be noticed that where the difference of ITC claimed is less than Rs.5,00,000/-, procedure is prescribed in Paragraph No. 4.1.2. Further directions are also made out at paragraph No. 4. It is clear as per Paragraph No. 6 of the Circular that the procedure to be followed is as regards all matters pending for adjudication as regards the financial year 2017-18 and 2018-19. If that were to be so, the adjudicating authority ought to have taken note of the Circular irrespective of whether the petitioner had raised such contention.



7. Accordingly, this Court is of the prima facie view that the Circular is applicable to the present facts and on such ground, the adjudication order is set aside. In so far as the contention of counsel for revenue that the applicability of the circular may also depend on the facts of the case, the said aspect is left open to be decided upon remand. The order of sending the matter back to the authority is being passed also keeping in mind the request of the petitioner to be given one more opportunity to put forth their case before the Authority.

8. Accordingly, the order at Annexure-A is set aside. The matter is remitted back for fresh consideration in terms of the observations made above. By virtue of setting aside of the adjudication order, petitioner is given another opportunity to participate in the proceedings. The petitioner who has been granted an opportunity of being heard once again, is to make an additional deposit of 10% of the tax amount as determined in the adjudication order dated 02.05.2023.



9. Accordingly, the petition is ***disposed off.***

**Sd/-
JUDGE**

VP